





State of Vermont
Department of Liquor Control
13 Green Mountain Drive
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liquorcontrol.vermont.gov

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AGENCY: Vermont Department of Liquor Control

DATE: September 5, 2008

ACTION: Request for Public Comment on the Classification, Definition, Marketing, Sale, and Taxation of Flavored Malt Beverages and Alcohol Energy Drinks

SUMMARY: The Vermont Department of Liquor Control (DLC) requests comments from all interested parties on whether legislative changes to the regulations governing flavored malt beverages are required. Sec. 3 (a) of 7 V.S.A. § 421 as enacted by the General Assembly of the State of Vermont, signed into law on May 24, 2008 states, "The department of liquor control shall study and identify best practices for the marketing, sale, and taxation of malt-based beverages containing other ingredients such as flavored distilled spirits, and 'alcohol energy drinks,' which are malt beverages containing other ingredients such as caffeine." Currently, malt-based beverages containing flavored distilled spirits and caffeine are classified as "malt beverages" and are marketed, sold, and taxed as such.

The rapid growth of this product sector has brought it to the attention of both federal and state regulators. Careful study conducted by the Alcohol and Tobacco Tax and Trade Bureau (TTB) "determined that a large number of these products derive nearly all of their alcohol from flavorings containing distilled spirits rather than fermentation during brewing..." (Department of the Treasury, 2003).

Under applicable federal and state statutes, beer and malt beverages are taxed and regulated differently than distilled spirits. The principle distinction is whether the alcohol in the product is derived from brewing or distilling. Flavored malt beverages differ from traditional malt beverages and beer in that many of them derive their taste and alcohol content primarily from added

flavorings, which typically contain distilled spirits. While the total alcohol content is similar to beer (4 to 6 percent alcohol by volume), as much as 99% of the alcohol in many of these products is derived from the distilled spirits found in the added flavoring, and not from the brewing process.

The definitions of "beer" and "malt beverage" in the relevant statutes do not properly allow beverages taxed at the beer rate and regulated as malt beverages to contain unlimited amounts of added distilled spirits. Consequently, it is appropriate and necessary to propose clear standards for these products.

The regulations on alcohol content of flavored malt beverages adapted by the TTB in 2005 require that, "in order to continue to be taxed and treated as beer or brewed beverages, the majority (51 percent or more) of alcohol in flavored malt beverages be the product of brewing. No more than 49 percent of the alcohol may come from other flavorings added to the product" (Department of the Treasury, 2004).

The TTB ruling regarding the permissible distilled spirit content of flavored malt beverages applies only to federal law. Under the 21st Amendment to the Constitution, states have independent authority to classify alcohol products. Most states have their own classifications for malt beverages or beer, wine, and distilled spirits that are distinct from federal definitions. The TTB has acknowledged that its ruling conflicts with state laws and that the states may determine independently whether to adopt the federal standard.

Therefore, the Vermont Department of Liquor Control is requesting comments from all interested parties on the classification of flavored malt beverages and best practices for their distribution, sales, marketing, and taxation.

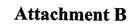
DATES: Written comments must be received by October 31, 2008 and may be submitted by mail (see address below), by fax to 802-828-2803, or by e-mail to Marcia.Lawrence@state.vt.us. Please reference this notice in any communications.

Any person who desires an opportunity to comment orally at a public hearing should submit his or her request to Commissioner Michael J. Hogan in writing within the comment period designated above. The Commissioner, however, reserves the right to determine, based on the circumstances, whether a public hearing will be held.

ADDRESSES: Send written comments to: Marcia Lawrence, Executive Assistant, Vermont Department of Liquor Control, 13 Green Mountain Drive, Montpelier, VT 05620-4501.

Copies of this document and the written comments received will be made available for public inspection upon request. Copies of this document and of the comments received will also be posted at the DLC website at http://liquorcontrol.vermont.gov/.

FOR FURTHER INFORMATION CONTACT: Marcia Lawrence, Executive Assistant, Vermont Department of Liquor Control, 13 Green Mountain Drive, Montpelier, VT 05620-4501; telephone 802-828-4932 or toll-free in-state 800-642-3134.





Commissioner Michael Hogan Vermont Department of Liquor Control Attn: Marcia Lawrence 13 Green Mountain Drive Montpelier, Vermont 05620-4501

RE: Request for Public Comment on the Classification, Definition, Marketing, Sale, and Taxation of Flavored Malt Beverages and Alcohol Energy Drinks

Dear Commissioner Hogan:

As craft brewers in Vermont, the Vermont Brewers Association (VBA) supports the federal guidelines for Flavored Malt Beverages, 51% of the alcohol derived from fermentation. Our members produce 100% of the alcohol from fermentation. This is the true nature of our craft and what our consumers appreciate and respect.

We would like to express a desire to keep our brewing opportunities open in all areas including non traditional ingredients and processes like coffee, various herbs and plants or wine/ whiskey barrel aging. Our consumers are interested in new brewing methods and ingredients much like coffee and wine connoisseurs. They appreciate our revival of centuries old brewing recipes as well as creating new and exciting beers of the future.

Flavor, quality, creativity, and diversity are what created our industry, the ability to continue using non traditional ingredients will allow us to grow our niche market in Vermont. The VBA supports the federal definition for Flavored Malt Beverages and do not support Vermont moving to a new definition or classification that could stymie our industry.

Please contact me for additional information.

Sincerely,

Matt Nadeau

Vermont Brewers Association; President

Cc. Heather Shouldice

Attachment C

McDermott Will&Emery

Boston Brussets Chicago Düsseldorf Houston London Los Angeles Miami Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C. Strategic alliance with MWE China Law Offices (Shanghai)

Marc E. Sorini Attorney at Law msorini@mwe.com +1 202 756 8284

October 29, 2008

Via E-mail (w/o attachments) and Overnight Delivery

Michael J. Hogan Commissioner Vermont Department of Liquor Control 13 Green Mountain Drive Montpelier, Vermont 05620-4501 ATTN: Marcia Lawrence

Re: <u>Comments on the Classification, Definition, Marketing, Sale and Taxation of Flavored Malt Beverages</u>

Dear Commissioner Hogan:

We write on behalf of the Flavored Malt Beverage Coalition (the "Coalition")¹ in response to the Department of Liquor Control's (the "Department") request for comments on its study of Vermont's current regulatory and tax schemes for flavored malt beverages ("FMBs").² The Coalition's members represent a broad spectrum of the alcohol beverage industry, from very large international companies to regional breweries. Together, members of the Coalition market and/or produce a substantial majority of FMBs sold in the United States over the last year.

We understand that certain groups are urging the Department to reclassify FMBs as spirits in an attempt to address underage drinking. The Coalition shares these groups' concerns about the serious issue of underage drinking. Reclassifying a small category of alcohol beverages, however, is not an effective means by which to address this complex issue. FMBs have been sold in the United States for decades, and they are subject to strict federal formulation and labeling rules. Furthermore, extensive federal investigations have shown that FMB suppliers responsibly market their products. See, e.g., Federal Trade Comm'n, Self-Regulation in the Alcohol Industry, Report of the Federal Trade Commission, June 2008 ("2008 Report"), attached as Ex. 1; Federal Trade Comm'n, Alcohol Marketing and Advertising: A Report to Congress at

Current members of the Coalition are City Brewing Company, LaCrosse, Wisconsin; Diageo North America, Inc., Norwalk, Connecticut; High Falls Brewing Company, Rochester, New York; Mark Anthony Brands, Inc., Seattle, Washington; O'Neill Beverages Company, Larkspur, California; and Pernod Ricard USA, Purchase, New York.

See Dep't of Liquor Control, Request for Public Comment on the Classification, Definition, Marketing, Sale, and Taxation of Flavored Malt Beverages and Alcohol Energy Drinks (Sept. 5, 2008); http://www.state.vt.us/dlc/pressreleases/20080905.html (last visited October 3, 2008).

3, September 2003 ("2003 Report"), attached as Ex. 2; Federal Trade Comm'n Response Letter to G. Hacker, Center for Science in the Public Interest, dated June 3, 2002, attached as Ex. 3.

As explained in more detail below, treating FMBs differently from other malt beverages would have negative repercussions throughout Vermont's alcohol beverage industry and would fail to effectively address Vermont's concerns regarding underage drinking for the following reasons:

- A. Treating non-beverage flavors the same as spirits would be a radical departure from the long-standing regulatory scheme for these products.
- B. Reclassifying FMBs as spirits would destabilize Vermont's long-standing classification standards for other malt beverages, as well as many wine products.
- C. Revamping the regulation or taxation of FMBs would harm Vermont businesses and potentially the Department itself.
- D. Revenue from FMBs would drop, not rise, if these products are reclassified.
- E. Reclassifying FMBs would not address concerns about alcohol energy drinks.
- F. Federal and state data indicate that changing the classification, distribution, sales or taxation of FMBs would have no impact on the principal factors that contribute to underage drinking.

I. Background

FMBs are not an easily-defined group of alcohol beverage products as some may suggest. FMBs simply are flavored beer. A flavored beer commonly begins with a base of beer, to which a variety of ingredients are added. Those ingredients include one or more flavors and those flavors ordinarily contain alcohol. Flavored beers today include a wide range of products such as Bud Light and Lime, Pete's Wicked Strawberry Ale, Seagram's Coolers and the category leader, Smirnoff Ice. Flavored beers have been sold throughout Vermont and the United States for decades.

While FMBs are defined by the presence of flavors, no flavored beer can contain distilled spirits such as gin, rum or whiskey. Federal law would regulate and tax any alcohol beverage that contains a beer base plus any amount of distilled spirits as a distilled spirit. See, e.g., 26 U.S.C. § 5001(a)(2), 5002(5), (8); compare with 27 U.S.C. § 206(a)(1), all attached as Ex. 4.

A. History of FMBs

FMBs are not a new concept. Malt beverages³ containing flavors trace their origins to the 1940s and first became a relatively significant part of the alcohol beverage market in the late 1960s, when the first generation of FMBs gained popularity as an alternative to the sweet wines of the time. Early FMBs included well-known brands like Champale and Malt Duck and resembled today's most popular FMBs in many respects.

The next significant development in the history of FMBs arose from a different drink category—the wine cooler. Becoming popular in the early and mid-1980s, the wine cooler combined a fermented wine base with water, sweeteners and non-beverage flavors. One of the first and most popular wine coolers during that time was a product known as "California Cooler," followed by the Bartles & Jaymes wine cooler brand, produced by Gallo Wine Co. The category soon included a myriad of products that tasted totally unlike their grape wine base.

The wine cooler spawned a second generation of FMBs when cooler producers converted from a wine base to a malt beverage base. The first malt-based cooler products appeared in the mid-1980s, and their development accelerated in the late 1980s. By the early 1990s, Seagram's cooler products, which originally contained a base of wine, converted to a malt beverage base. Other popular cooler products quickly followed Seagram's lead, most notably the Bacardi Breezer family of brands and the Bartles & Jaymes family of brands. Many of these second-generation FMBs shared all the salient characteristics of today's most popular FMBs, and many remain in the market today.

Beginning in 1999 and peaking around 2000, a third generation of FMBs gained popularity with American consumers. Members of the Coalition produce the leading third-generation FMBs – Smirnoff Ice and Mike's Hard Lemonade. These FMBs contain a malt beverage base with added flavors, are typically packaged in 11.2 or 12 oz. ready-to-drink bottles (like Budweiser and other conventional malt beverages), are distributed and sold by beer wholesalers and retailers, and are perishable like all malt beverages. A vast majority of the FMBs sold today contain 4 to 6% alcohol by volume, attached as Ex. 5 – like most "regular" malt beverages such as Budweiser, Coors and Miller, attached as Ex. 6.

B. Federal FMB Rulemaking

At the federal level, FMBs are subject to strict composition and labeling rules. See 27 C.F.R. §§ 7.11, 25.15, all attached as Ex. 7. These federal rules are the result of decades of work by the Bureau of Alcohol, Tobacco & Firearms ("ATF") and its successor, the Alcohol & Tobacco Tax & Trade Bureau ("TTB").

We use the term "malt beverage" for consistency with Vermont law, which employs the term "malt beverage" to describe alcohol beverages produced from the fermentation of malt or other starch substitutes. Vt. Stat. Ann. tit. 7, § 2(14).

Beginning in the late 1950s, ATF's predecessor agency implemented federal regulations requiring brewers to submit a statement of process ("SOP") to the agency for products marketed under a name or description other than beer, ale, porter or stout. See, e.g., 27 C.F.R. § 245.41 (1981); 27 C.F.R. §§ 25.62(a)(7), 25.67 (2004), all attached as Ex. 8. As part of an SOP, the brewer had to identify "the kinds and quantities of materials to be used, the method of manufacture, and the approximate alcohol content of the finished product." See, e.g., 27 C.F.R. § 245.41 (1981); 27 C.F.R. § 25.67 (2004). As a result, TTB and its predecessors developed an extensive repository of proprietary information regarding the use of non-beverage flavors in an array of malt beverages.

In 1996, ATF began work to revise the standards governing the use of flavoring materials containing alcohol in malt beverages. See Flavored Malt Beverage and Related Regulatory Amendments; Final Rule, 70 Fed. Reg. 195 (Jan. 3, 2005), attached as Ex. 9. First, it issued ATF Ruling 96-1, attached as Ex. 10, which limited the maximum amount of alcohol derived from alcohol flavor materials to 1.5% for malt beverages with a total alcohol content in excess of 6% alcohol by volume. Subsequently, ATF issued ATF Ruling 2002-2, attached as Ex. 11, which set out revised labeling and advertising guidelines for FMBs. ATF also tested FMBs in the market in 2002 in order to assess FMB formulation practices at that time.

In March of 2003, TTB issued a notice of proposed rulemaking to establish new rules for the composition, labeling and advertising of FMBs. After carefully reviewing over 16,000 public comments submitted in response to that rulemaking, TTB finalized new FMB rules in January 2005.⁴ In terms of product composition, the FMB rules classify an alcohol beverage as a malt beverage if:

- It does not contain distilled spirits. See, e.g., 26 U.S.C. §§ 5001(a)(2), 5002(5), (8).
- It contains 6% alcohol by volume or less and at least a majority (51% or more) of its alcohol is derived from a fermented beer base. See, e.g., 27 C.F.R. §§ 7.11, 25.15; Final Rule, 70 Fed. Reg. at 194.
- It contains more than 6% alcohol by volume and not more than 1.5% of its alcohol is derived from added non-beverage flavorings. See id. 5

Thirty-two state alcohol beverage control agencies and nearly 250 state elected officials submitted comments on the federal FMB rulemaking. No government official of Vermont, legislative or executive, submitted comments to TTB as part of the rulemaking process.

TTB actively enforces these standards. Based on the results of brewery inspections and product testing, TTB has taken action against brewers who produced FMB products that did not comply with federal standards. See Industry Circular 2008-3, attached as Ex. 12. TTB also is engaged in brewer education regarding FMB standards. TTB recently issued guidance documents to remind brewers that they face serious consequences if they fail to comply with federal regulations governing the production of FMBs and notifying brewers of new restrictions on permissible use rates for alcohol flavoring ingredients in formula submissions. See Industry News, Flavored Malt Beverages with Flavors Containing Alcohol, Sept. 2008, attached as Ex. 13.

C. State FMB Standards

The FMB classification and labeling standards for the vast majority of states and the District of Columbia correspond with federal FMB standards. Since 2005, when questions have arisen regarding the clarity of how state law treats FMBs, most states have enacted legislation adopting the federal standards. See, e.g., Md. Code Ann., Art. 2B, § 1-102(3); Or. Rev. Stat. § 471.001(6)(b); Tenn. Code Ann. § 57-5-101; Va. Code Ann. § 4.1-100; Wash. Rev. Code § 66.04.010(19), all attached as Ex. 14. Out of fifty states, only Maine and Utah have taken action to treat FMBs as something other than malt beverages/beer for sales and tax purposes, and California treats FMBs like distilled spirits for tax purposes only.

II. Comments

As explained below, calls to re-classify FMBs as spirits fail to recognize that such a radical change could produce more harm to Vermont's interests than benefit.

A. Treating non-beverage flavors the same as spirits would be a radical departure from the long-standing regulatory scheme for these products.

Any argument that FMBs should be treated as spirits inherently assumes that non-beverage flavors used in FMBs are the same as spirits. This position fails to recognize the fundamental distinctions between these types of products. Many of the thousands of non-beverage flavors used throughout the food and beverage industry contain alcohol – alcohol that, by law and for good technical reasons, must be distilled. See Materials on Commonly-Used Flavors, attached as Ex. 16. Indeed, no fewer than five complete Parts of the federal regulations governing the taxation and use of ethyl alcohol – the same alcohol we consume in beverages – are dedicated to alcohol used for non-beverage purposes. See 27 C.F.R., Parts 17 (flavors and other nonbeverage "articles"), 18 (volatile fruit-flavored concentrates), 20 (denatured alcohol and rum), 21 (formulas for denatured alcohol and rum), 22 (tax-free pure alcohol; usually for hospital and laboratory use), see also 27 C.F.R., Part 19, Subpart Y (ethanol), all attached as Ex. 17.

The line between a spirit and a non-beverage flavor is drawn by an objective test that examines whether or not the product, standing on its own, is "unfit for beverage use." See 26 U.S.C. § 5111 (federal "unfit for beverage purposes" criteria), attached as Ex. 18. The federal

In Maine, the state has placed FMBs in a fourth statutory category, which is regulated like wine and taxed at a rate somewhere between the beer and distilled spirits rates. Utah recently passed legislation at the urging of the Church of Latter Day Saints to classify all FMBs as alcohol beverages that must be sold through Utah's state store system. In California, a legal challenge to the regulations proposing to tax FMBs as distilled spirits is pending, and a hearing on the plaintiffs' motion for summary judgment is scheduled for December 9, 2008.

As the flavor industry's trade association explained to the federal government, "most flavors contain ethyl alcohol because it is a safe, economical, and effective extraction medium for fruits, nuts, and botanicals (cocoa, coffee, vanilla, etc.), as well as a diluent for polar and non-polar flavor chemicals." See Flavor and Extract Manufacturers Association of the United States letter to A. Libertucci, U.S. Treasury Department, dated Oct. 31, 2002, attached as Ex. 15.

government does not leave the distinction between a distilled spirit and a flavor to chance or the discretion of a private party. Instead, TTB tests approximately 7,300 flavors containing alcohol every year to confirm that they are unfit for beverage use. See e-mail from Julie Arthur, Chemist, TTB Nonbeverage Product Laboratory, to Deborah Ringo, dated October 27, 2008, (identifying flavors formulas under the category "drawback") attached as Ex. 19. TTB accordingly makes a specific determination as to each and every flavor on the market. Products deemed "fit" are taxed and regulated as beverage distilled spirits. Indeed, federal law does not even permit distilled alcohol deemed fit for beverage purposes onto a brewery premises. See 27 U.S.C. § 206(a)(1) (prohibiting the sale of bulk spirits to a brewer).

Vermont law also treats non-beverage flavors and spirits as distinct products. Vt. Stat. Ann. tit. 7, § 61; Vt. Code R. 226-3 (food products include flavoring extracts but exclude spirituous, malt or vinous liquors). As far as we are aware, there is no precedent in Vermont for treating an "unfit" product as a spirit simply because it is later used in a beverage. Were it otherwise, thousands of gallons of flavors, soft drink concentrates and other products sold in Vermont would suddenly become subject to excise taxation and could only be sold through Vermont's control system.

B. Reclassifying FMBs as spirits would destabilize Vermont's long-standing classification standards for other malt beverages, as well as many wine products.

Vermont law contains similar definitions for the two recognized types of fermented alcohol beverage. "Malt beverages" include "all fermented beverages of any name or description manufactured for sale from malt, wholly or in part, or from any substitute therefore, known as beer, porter, ale and stout, containing not less than one percent nor more than 16 percent alcohol by volume at 60 degrees Fahrenheit." Vt. Stat. Ann. tit. 7, § 2(14). "Vinous beverages" include "all fermented beverages of any name or description manufactured or obtained for sale from the natural sugar contents of fruits, or other agricultural product, containing sugar, the alcoholic content of which is not less than one percent nor more than sixteen percent by volume at sixty degrees Fahrenheit," with the exception of vermouth. *Id.* § 2(23).

In alignment with federal standards, the Department currently interprets the malt beverage definition to include those made with adjuncts, non-beverage flavors, or other ingredients containing alcohol, so long as the product's alcohol content does not exceed 16% alcohol by volume. Likewise, the Department classifies wines fortified with wine spirits and wines made with non-beverage flavors as vinous beverages if their alcohol content does not exceed 16%.

Based on the symmetry of these statutory definitions, any effort to reclassify FMBs as spirits for purposes of distribution, sales or taxation would have a ripple effect both within and across Vermont's alcohol beverage classifications. If the Department sought to re-interpret the malt beverage definition to exclude FMBs because they derive a portion of their alcohol content from alcohol flavor ingredients, it would be forced to reclassify all malt beverages that contain alcohol from sources other than fermentation. This would include many conventional malt beverage

products that may obtain alcohol from hop extracts, and many small brewer products containing flavors, such as Long Trail Blackberry Wheat, Pete's Wicked Strawberry Ale, and Samuel Adams Cherry Wheat. Such an approach to statutory interpretation also would force fortified wines and flavored wines out of the vinuous beverage classification. If the state legislature attempted to amend the Vermont alcohol beverage code to treat FMBs as something other than malt beverages, it would be very difficult to avoid classifying all malt beverages made with non-beverage ingredients containing alcohol, such as hop extracts, as spirits. Such a major change would impact hundreds of malt beverages traditionally sold by Vermont retail dealers. In addition, the legislature would have to grapple with how its changes to the malt beverage classification would impact criteria under the vinous beverage classification.

C. Revamping the regulation or taxation of FMBs would harm Vermont businesses and potentially the Department itself.

Treating FMBs like spirits for regulatory or tax purposes would adversely affect Vermont businesses and consumers. Prior history clearly demonstrates that if FMBs are reclassified as spirits, manufacturers will simply stop selling them in the state altogether or reformulate their FMB products to remain within the malt beverage classification. In response to Utah's reclassification of FMBs as spirits, most companies have stopped selling their FMB products in the state. Thus, Vermont wholesalers, retail dealers and legal drinking age consumers could lose access to some FMBs currently sold throughout the state.

Losing access to FMB products would hurt the bottom-line of Vermont wholesalers and off-premise retail dealers. *First*, in-state wholesalers have invested substantial amounts of time and resources in developing retail accounts for FMBs. If FMB products are withdrawn from the Vermont market, the wholesalers that carry those products would take a double hit – they would lose the ability to sell those FMBs and would receive no compensation for the loss of their distribution rights. *Second*, many retail dealers throughout Vermont earn much-needed revenue from the sale of FMBs to legal drinking age consumers. If FMBs are withdrawn from the Vermont market, off-premise retailers would lose access to a valued source of revenue at a time when they can least afford it.

Should reclassification occur, the only conceivable winners would be those out-of-state businesses that could sell FMBs to Vermont consumers seeking the beverages they want. As the Department surely knows, citizens often cross state lines (and even violate state tax laws) in order to seek products they want, or to obtain a better price than the price available within the state. See Associated Press, Utah Beer Sales Declining, Oct. 15, 2008, attached as Ex. 20. Here, regardless of whether a reclassification made an FMB unavailable or greatly raised its price, most adult Vermonters could easily obtain these products by driving a short distance to Massachusetts, New Hampshire or New York.

The Department itself would face significant administrative and financial burdens if FMBs were treated as spirits for classification, distribution or tax purposes. Revamping the regulatory

scheme for FMBs would require the Department to take action: *First*, to determine the substantial range of products requiring classification; *Second*, to implement rules determining the classification of these many hundreds of products; *Third*, to develop enforcement protocols that would allow the Department to ensure compliance with its state-specific classifications; *Fourth*, to develop Department resources dedicated to such enforcement; and *Fifth*, to implement such an enforcement plan. Without question, creating a new regulatory scheme for FMBs from whole cloth is time-consuming. Even with its extensive experience with FMBs, it took TTB nearly two years to complete its FMB rulemaking process. The cost impact could be devastating to the Department's budget as well. For instance, the State Board of Equalization in California recently requested nearly \$4 million over three years to cover the personnel and administrative costs associated with the implementation of its new tax scheme for FMBs. *See* Executive Brief, State Board of Equalization, Fiscal Year 2009-10, Flavored Malt Beverages, dated Sept. 16, 2008, attached as Ex. 21. Based on the Department's limited budget and multiple responsibilities, it is highly unlikely that the Department could accomplish such a substantial task simply by redirecting current resources.

D. Revenue from FMBs would drop, not rise, if these products are reclassified.

It is a myth that taxing FMBs at the spirits rate would generate additional revenue for state coffers. Prior experience has shown that in this circumstance manufacturers either reformulate their products to remain within the malt beverage classification or simply stop selling their products in the jurisdiction. In Utah, tax revenue from FMBs has declined because most FMB suppliers no longer offer their products for sale. See Associated Press, Utah Beer Sales Declining, Oct. 15, 2008. In California, the State Board of Equalization estimated that taxing FMBs as spirits would generate over \$41 million in additional revenue for the state. See State Board of Equalization, Flavored Malt Beverages, Issue Paper No. 07-007, attached as Ex. 22. This estimate was based on the false presumption that most FMB suppliers would not reformulate and would remain in the market. Instead, every major brand of FMB has reformulated in response to the Board of Equalization's action and are now approved for taxation as beer in the state. See State Board of Equalization, List of Alcoholic Beverages That Successfully Rebutted the Presumption of Regulation 2559 and Are NOT Distilled Spirits for Taxation Purposes, dated Oct. 10, 2008, http://www.boe.ca.gov/sptaxprog/pdf/beer_list.pdf, attached as Ex. 23. As demonstrated in Utah and California, FMB manufacturers consider reformulation or withdrawal as the only viable choices they have when FMBs are treated as spirits.

Creating a new FMB category does not avoid the potential for reduced revenue. If Vermont used objective criteria to distinguish a malt beverage from an FMB, like the percentage of alcohol derived from fermentation only, FMB manufacturers would either reformulate to meet the new malt beverage standard or pull their products from the market.

E. Reclassifying FMBs would not address concerns about alcohol energy drinks.

Growing concerns about alcohol energy drinks in Vermont and across the nation have little to do with FMBs. FMBs like Smirnoff Ice, Mike's Hard Lemonade and Seagram's Coolers are produced, packaged and sold like conventional malt beverages. FMBs are made from a malt beverage base, are perishable like malt beverages, are sold in bottles like malt beverages, have an alcohol content range like malt beverages, and are distributed and sold by malt beverage wholesalers and retailers. Alcohol energy drinks, on the other hand, contain added caffeine and/or herbal stimulants.

Public officials, community advocates and medical professionals have expressed concern about the adverse effects of combining alcohol and energy drinks as well as the potential risk to underage youth who may be attracted to these products as energizing or stimulating. At their core, these concerns focus on the use of stimulants with beverage alcohol and the responsible marketing of alcohol beverages, issues that have little to do with the source of alcohol in any alcohol beverage. Because the issues regarding alcohol energy drinks transcend beverage classification methods, the Department and state legislature should not be distracted by unfounded arguments that reclassifying FMBs would be an effective solution.

F. Federal and state data indicate that changing the classification, distribution, sales or taxation of FMBs would have no impact on the principal factors that contribute to underage drinking.

The Coalition's member companies take the issue of underage drinking seriously and therefore expend considerable sums on alcohol responsibility programs. Our members do not believe that FMBs cause underage drinking, and they seek to work with government at all levels to find effective solutions. Nevertheless, in light of repeated assertions that FMBs are marketed to underage youth, we take this opportunity to briefly highlight some facts that undermine any suggestion that regulating and taxing FMBs as spirits would have any meaningful impact on underage drinking.

First, extensive federal investigations have shown that FMB suppliers responsibly market such products. In 2002, the Federal Trade Commission ("FTC") and ATF conducted a joint investigation of allegations that FMB suppliers were targeting underage youth in their advertising and retail placement practices. The agencies did not find any evidence that FMBs were placed with non-alcoholic beverages in retail outlets or that FMB advertising was targeted to underage individuals. See Federal Trade Comm'n Response Letter to G. Hacker, Center for Science in the Public Interest, dated June 3, 2002. Then again in 2003, the FTC conducted an

For several years, some have argued that FMBs should be re-classified as spirits because nearly 99% of their alcohol content is derived from alcohol contributed by non-beverage flavors. This argument simply is outdated and has no relevance to the composition of FMBs today.

Michael J. Hogan October 29, 2008 Page 10

extensive investigation of FMB marketing, and found that "adults appear to be the intended target of [FMB] marketing, and that the products have established a niche in the adult market. The investigation found no evidence of targeting underage consumers in the [FMB] market." See 2003 Report at 3 (FMBs were "not co-mingled with non-alcoholic products").

The FTC's most recent report on alcohol advertising underscores that FMBs are not marketed to youth. The alcohol beverage industry follows strict marketing codes designed to ensure that the content of alcohol advertising does not have special appeal to minors, and that such advertisements' placement does not overexpose youth to such advertisements. The industry does not place advertisements in any media whose audience is expected to consist of less than 70 percent of persons above the legal drinking age. According to the FTC's 2008 Report, this standard "has helped to ensure that alcohol advertising is not disproportionately directed to those below the legal drinking age." See 2008 Report at 19.

For the 2008 Report, the FTC reviewed detailed advertising information from twelve major alcohol beverage suppliers in the United States, covering all types of alcohol beverages, including FMBs. See id. After reviewing this voluminous data, the FTC determined that "more than 92 percent of all television, radio, and print advertising placements for which data were available had [a legal drinking age] audience composition of 70 percent or better when they ran." Id. at ii. In addition, the FTC found that "about 97 percent of total alcohol advertising 'impressions' (that is, individual exposures to an advertisement) were due to placements that met the 70 percent target." Id. If claims of wide-spread FMB marketing to underage youth were accurate, it is unlikely that the FTC would have identified such a high compliance rate with the 70 percent legal drinking age audience standard.

Second, it is hard to reconcile claims that FMBs are widely marketed to underage youth with the fact that FMB advertising budgets have shrunk dramatically in the past six years. FMB advertising expenditures peaked in 2002 and then had dropped by nearly 87% by 2006. See Ex. 24. These advertisements were placed in accordance with the 70 percent standard followed by the industry and supported by the FTC. Insinuations that the industry is aggressively marketing FMBs to underage persons – or any persons – are simply not supported by the data.

Third, it is hard to understand how any change in FMB classification would have any meaningful impact on underage drinking when nearly 90% of Vermont youth who drink report that they obtained the alcohol from someone other than a retailer. According to the 2007 Vermont Youth Risk Behavior Survey, 70% of students who drink reported that someone gave them the alcohol or they gave money to someone to buy the alcohol for them. See 2007 Vermont Youth Risk Behavior Survey at 30, attached as Ex. 25. In addition, 21% of students who drink said that they got their alcohol at home. Id. Channeling FMBs through state liquor stores would have no impact on this problem. Of those Vermont students who report drinking, over 50% of females and nearly 50% of males consumed alcohol beverages other than malt beverages or FMBs. Id. at 31. These statistics show that how an alcohol beverage is classified has little to do with whether or not underage youth can easily obtain that product.

* * *

Coalition members continue to believe that we can make progress in the fight against underage drinking by focusing on the real issues of underage access to alcohol – adult providers and alcohol awareness education. But unreasonably targeting a very small sub-set of the malt beverage category will do nothing except waste state government resources and penalize Vermont businesses and law-abiding citizens.

For the reasons expressed above, we believe that Vermont should keep intact its current regulatory and tax schemes for FMBs. We also request the opportunity to participate in any public hearing that the Department holds regarding this matter.

Sincerely,

Marc E. Sorini

cc: Greg Altschuh

Coalition Members

WDC99 1634141-1.065337.0010





October 30, 2008

Marcia Lawrence, Executive Assistant Vermont Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05620-4501

RE: Flavored Malt Beverages and Alcohol Energy Drinks

Dear Marcia:

The Vermont Grocers' Association supports the current Vermont statutory definition of malt beverages, which is found in Title 7:

(14) "Malt beverages": all fermented beverages of any name or description manufactured for sale from malt, wholly or in part, or from any substitute therefor, known as beer, porter, ale, and stout, containing not less than one percent nor more than 16 percent of alcohol by volume at 60 degrees Fahrenheit. However, if such a beverage has an alcohol content of more than six percent and has a terminal specific gravity of less than 1.009, it shall be deemed to be a spirit and not a malt beverage. The holder of the certificate of approval or the manufacturer shall certify to the liquor control board the terminal specific gravity of the beverage when the alcohol content is more than six percent.

We could also support a change to mirror the federal definition of malt beverages, which states may also consider (I believe Nebraska recently adopted the federal definition).

Flavored malt beverages consist of a variety of the malt beverage market, including what used to be referred to as wine coolers. They have been distributed by our state's beer and wine wholesalers and sold by retail stores (second class licensees) for many years now. We see no reason to change their current classification either for purposes of taxation or limiting their sales.

Vermont retailers take their responsibilities seriously when it comes to following Vermont's alcohol laws and regulations. They work diligently to prevent the sales to minors.

Thank you for the opportunity to comment on this issue. We are happy to engage in further discussion with the Department of Liquor Control as necessary.

Sincerely,

Jim Harrison

135 North Main St., Ste. 5, Rutland, Vermont 05701-3238

802-775-5460

802-773-2242 Fax

www.vtgrocers.org

email: info@vtgrocers.org

Attachment E



October 31, 2008

Ms. Marcia Lawrence
Executive Assistant
Vermont Department of Liquor Control
13 Green Mountain Drive
Montpelier, VT 05620-4501

Re: "The department of liquor control shall study and identify best practices for the marketing, sale, and taxation of malt-based beverages containing other ingredients such as flavored distilled spirits, and 'alcohol energy drinks,' which are malt beverages containing other ingredients such as caffeine."

Dear Ms. Lawrence:

Please accept these comments on behalf of MillerCoors, LLC ("MillerCoors") to support our recommendation that responsible marketing and sales of malt beverages, including malt beverages containing flavors and other ingredients require no change in Title 7 of the Vermont Statutes Annotated or in existing regulations as adopted by the Vermont Department of Liquor Control pursuant to Title 7 of the Vermont Statutes Annotated. In addition, we recommend that current taxes on malt beverages require no change, especially since malt beverages containing more than six percent alcohol by volume and not more than eight percent alcohol by volume are considered a spirit and taxed at a rate more than twice the tax of malt beverages containing not more than six percent alcohol by volume.

Consumer Preferences Drive New Product and Drink Innovations

Brewers and the beer industry are not unlike the cider, wine and spirits industries when it comes to responding to the consumers' evolving tastes and product preferences. What consumers want or prefer has been the primary factor driving creation of new and innovative drinks, including prepared packaged flavored malt beverages. Brewers and Vermont DLC share interests to meet consumer demand for innovative beverages and providing beverages with lower concentrations of alcohol, clearly labeled, and responsibly consumed by the consumer. MillerCoors brews flavored malt beverages, including flavored malt beverages containing caffeine. Vermont DLC sells spirit products containing many of the same flavors, including products with caffeine. Vermont DLC also sells spirit products that are used by consumers and bartenders to mix or create beverages that have many of the same flavors, and many contain caffeine.

In the absence of commercial choices consumers and on-premise retailers will make flavored beverages, including beverages that contain caffeine. Using a malt beverage base and adding ingredients to change the flavor or taste of the finished product has motivated and rewarded brewers in many of the same ways flavors have rewarded cider, wine and spirit manufacturers. Combined

Ms. Marcia Lawrence October 31, 2008 Page 2

with effective and responsible marketing and sales practices many malt beverage products are successfully competing for a share of the consumer's beverage dollar.

Popularity Of Flavored Brewed Products Is Growing

Brewing a better malt beverage base coupled with better flavors allows brewers to market new and innovative finished products that meet many consumer expectations. It is not unusual for a product to evolve from consumer experimentations, a new twist or recipe by a bartender, capturing a better commercial flavor, or balancing flavor with a better malt base. Regardless of the beginnings, simply preparing a flavored malt beverage for sale in a bottle or can will not guarantee success in the marketplace. Nevertheless, new and innovative tastes and flavors in alcohol beverage drinks are no longer reserved to spirits and wine coolers. A significant change to flavored malt beverage history occurred during the last ten years. This change came from commercial flavor manufacturers and provided brewers better flavors and flavoring resulting in more variety that better matched consumer taste preferences when added to a malt beverage base. In addition, brewers have access to better technology that compliments brewing a better malt beverage base used for flavored malt beverages.

Labels Provide Clear Information About Flavored Malt Beverages

Clear labeling of the alcohol content of flavored malt beverages required by Alcohol and Tobacco Tax and Trade Bureau ("TTB")¹ present consumers with information they need to know the amount of alcohol they consume. However, this information is not easily calculated by consumers who free pour their own mixtures and drink creations using whiskey, rum, brandy, gin, tequila, or vodka.

During the past two decades our federal government approved laws² and regulations³ that require clear warnings and information about the alcohol content on labels of prepared flavored malt beverages.

The presence of flavored malt beverage products in the marketplace supports sound public policy because they promote production and consumption of packaged products that have lower concentrations of alcohol by volume. Certainly, the concentration of alcohol per fluid ounce of consumed alcohol beverage in pre-packaged flavored malt beverages is less than the alcohol concentration produced in most pre-packaged wine, spirits and distilled spirit specialty products.

 $^{^1}$ See TTB mandatory labeling information brochure on internet (a) www.ttb.gov./pdf/brouchures/p51903.pdf

² See *Alcohol Beverage Labeling Act of 1988*. Since 1989 brewers have included a 42-word health warning on every container of malt beverage and flavored malt beverage sold in the US. (USC 27, Sec 215(a)). The Act requires that the warning statement be "located in a conspicuous and prominent place on the container of such beverage," and that the statement "shall appear on a contrasting background."

^{3 (}a) The Bureau of Alcohol, Tobacco and Firearms adopted regulations to develop the requirements for the display of the government mandated warning statement, including that the statement be "readily legible under ordinary conditions", "on a contrasting background", and "separate and apart from all other information." See 27 CFR §16.

⁽b) The Alcohol and Tobacco Tax and Trade Bureau, US Department of Treasury provides for stating the alcohol content of malt beverages on labels and in advertising, and prohibits any "statement, design, device, or representation that tends to create a false or misleading impression that the malt beverage contains distilled spirits or is a distilled spirits product." See 27 CFR §7.29(a) (7).

⁽c) The Alcohol and Tobacco Tax and Trade Bureau, US Department of Treasury provides for stating the alcohol content of malt beverages on labels and in advertising, and prohibits any "health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement." See 27 CFR §7.29(e).

Consumers and Government Benefit From Self-Regulation By MillerCoors

MillerCoors is a leader in self-regulations and pledges to voluntarily adhere to advertising content standards that are much more extensive than what Vermont law or regulation can restrict or require. MillerCoors is a member of the Beer Institute and we pledge to advertise in compliance with standards set out in the Beer Institute's Advertising and Marketing Code ("Code")⁴. We encourage you to review the many standards included in the Code. MillerCoors pledges to self-regulate and place advertising in newspapers and magazines, on TV/Cable, radio and the internet in compliance with guidelines published by the Beer Institute⁵. MillerCoors also pledges to accept review of our actions by the recently established independent third party Code Compliance Review Board ("CCRB").⁶

We respectfully recommend to the Vermont DLC that MillerCoors' voluntary compliance to the Code, ad placement guidelines and oversight by the CCRB are three best practices for marketing and selling flavored malt beverages. These self-regulatory best practices are supported by the Federal Trade Commission and provide Vermont DLC, other Vermont government agencies and elected officials, consumers, citizens, and residents immediate and direct interaction with MillerCoors. In any event when there may be disagreement there is the availability of an independent third party review which is faster than most agency administrative or judicial processes. As important is the fact that MillerCoors pledges and the self-regulatory process are much less expensive to the taxpayers and government of Vermont. We ask that the Vermont DLC consider the benefit of the three recommended best practices in lieu of any alternative law, regulation, or action under its governing authority.

TTB's Active Oversight of Flavored Malt Beverages Benefits Vermont

TTB spends millions of dollars to actively enforce and maintain strict controls over alcohol beverage products, including flavored malt beverages. These controls include strict pre-clearance of labels, and constant vigilance over advertising, marketing and applicable trade practices. TTB's diligent work and enforcement indirectly advances Vermont's declared statutory purposes for controlling alcohol beverages, i.e. to protect the public welfare, good order, health, peace, safety, and morals of the people. TTB has a proven history of engaging the alcohol beverage industry and promoting self-regulatory best practices of the brewers. MillerCoors and other brewer self-regulation is very important since TTB and Vermont DLC can only be as active in enforcement of laws and regulations pertaining to product safety, labeling, advertising, sales, and marketing practices as the existence of real and substantial evidence that proves the enforced against fear, harm or evil will actually exist in the absence enforcement.

⁴ See <u>www.beerinstitute.org/BeerInstitute/files/ccLibraryFiles/Filename/oooooooo384/2oo6ADCODE.pdf</u>

⁶ See http://www.beerinstitute.org/tier.asp?bid=258

The FY 2008 enacted direct appropriation for TTB is \$93,515,000. See TTB.gov.

⁸ See Title 7 V.S.A Chapter 1, §1.

Ms. Marcia Lawrence October 31, 2008 Page 4

Vermont's definition of "malt beverage" fits within the definition of "malt beverage" as set forth under the Federal Alcohol Administration Act ("FAA Act") which requires the beverage be made "by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption." A "flavor", for purposes of this comment, is a commercially prepared product that qualifies for use in alcohol beverages and has been approved by the TTB for use as a flavor or for flavoring. Most prepared flavors contain ethyl alcohol since it is used as a valuable and efficient extraction medium. The federal tax on ethyl alcohol used in food or beverage flavors is subject to drawback if it is produced as a "non-beverage" flavor since the flavors themselves are not beverages or susceptible to being consumed as a beverage, e.g. vanilla extract, peppermint extract each contain a significant level of spirits but are not beverages.

MillerCoors can only use TTB approved flavors producing a flavored malt beverage. Upon completion of the production of a flavored malt beverage containing not more than six percent alcohol by volume the brewer must have documentation showing the amount of alcohol derived from the fermented malt beverage base and not from any added non-beverage flavor or ingredient containing alcohol.¹² To maintain its status as a malt beverage the TTB requires that at least 51% of the total alcohol in the flavored malt beverage is derived from the fermented malt beverage base.¹³ TTB actively enforces this standard, which will result in heavy penalties if not met.¹⁴

See Title 7 V.S.A. Chapter 1, \$2(14) "Malt beverages": all fermented beverages of any name or description manufactured for sale from malt, wholly or in part, or from any substitute therefor, known as beer, porter, ale, and stout, containing not less than one percent nor more than eight percent of alcohol by volume at 60 degrees Fahrenheit. However, if such a beverage has an alcohol content of more than six percent and not more than eight percent and has a terminal specific gravity of less than 1.009, it shall be deemed to be a spirit and not a malt beverage. The holder of the certificate of approval or the manufacturer shall certify to the liquor control board the terminal specific gravity of the beverage when the alcohol content is more than six percent and not more than eight percent.

¹⁰ See 27 U.S.C. 211(a)(7). See also 27 CFR 7.10.

¹¹ See 27 CFR 17.141

Federal standards provide for the acceptability of adding flavors, including flavors that contain alcohol, Since Vermont law defines malt beverage containing more than six percent alcohol by volume to be a "spirit" such products are not being commented on herein as they do not fall within the request for comments published by the DLC.

See 27 C.F.R. 25.15. "(a) Beer must be brewed from malt or from substitutes for malt. Only rice, grain of any kind, bran, glucose, sugar, and molasses are substitutes for malt. In addition, you may also use the following materials as adjuncts in fermenting beer: honey, fruit, fruit juice, fruit concentrate, herbs, spices, and other food materials.

⁽b) You may use flavors and other nonbeverage ingredients containing alcohol in producing beer. Flavors and other nonbeverage ingredients containing alcohol may contribute no more than 49% of the overall alcohol content of the finished beer. For example, a finished beer that contains 5.0% alcohol by volume must derive a minimum of 2.55% alcohol by volume from the fermentation of ingredients at the brewery and may derive not more than 2.45% alcohol by volume from the addition of flavors and other nonbeverage ingredients containing alcohol. In the case of beer with an alcohol content of more than 6% by volume, no more than 1.5% of the volume of the beer may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol."

¹⁴ **Mislabeling** "The TTB regulations issued under the labeling provisions of the Federal Alcohol Administration Act (FAA Act, 27 U.S.C. 205(e)) require that alcohol beverage labels provide the consumer with adequate information about the identity of a product and prohibit deceptive information on the label. Distilled spirits products that are labeled as beer or malt beverages are mislabeled under the FAA Act and therefore may not be introduced into interstate or foreign commerce." *See* TTB *Industry Circular* # 2008-3, dated July 23, 2008 entitled "Non-Compliant Flavored Malt Beverages

Flavored Malt Beverages With Caffeine Compete With Similar Beverages Made By Consumers and Bartenders

Your notice also sought comments about "... 'alcohol energy drinks,' which are malt beverages containing other ingredients such as caffeine." MillerCoors agrees that there is noteworthy consumer demand for a segment of flavored malt beverage products that contain caffeine, i.e. caffeinated alcohol beverages ("CAB"). Demand for CABs has grown with legal drinking age adults who heretofore mixed spirits products containing higher concentrations of alcohol with non-alcoholic beverages containing caffeine, e.g. Red Bull®, Monster® and or similar beverages containing various levels of caffeine. Though CABs acquired recent status in the marketplace we recommend that current labeling and marketing of CABs are adequate and meet requirements applicable for other flavored malt beverages.

Flavored Malt Beverages Containing Caffeine Should Not Be Taxed Differently

Taxes tend to punish responsible behavior, not promote it. The range of tax on flavored malt beverages varies considerably among the various states. It is our observation that any increase in the rate of tax may force some irresponsible consumers to seek cheaper sources of alcohol, and force even more responsible consumers to choose from a smaller number of affordable brands. We have not observed where the tax on flavored malt beverages effectively prevented irresponsible, sometimes illegal, consumer behaviors resulting in the acquisition, purchase or consumption of alcohol.

With particular focus on flavored malt beverages containing caffeine, or any alcohol beverage containing caffeine we propose that this would really be a tax on caffeine. While a tax on caffeine may be suspect, it is even more difficult to determine how Vermont could be evenhanded in determining and collecting tax from a licensed retailer that offers, prepares or sells caffeinated alcohol beverage drinks made or mixed with a malt beverage, cider, wine or spirit.

MillerCoors Is a Responsible Brewer Concerned About Our Communities

At MillerCoors, it is our passion to understand our products and customers, and bring them together without promoting intoxication or discouraging intemperance. MillerCoors was created earlier this year and it only markets its malt beverage products and brands within the United States of America and Puerto Rico. MillerCoors now represents over two hundred and fifty combined years of experience from two great American brewing families. MillerCoors continues to enjoy its historical ties to American brewing and its rich heritage. This includes respecting responsible consumption of our products in the traditions, cultures, and social mores that make each of the states and so many of their local communities unique. MillerCoors regards being a brewer as a privilege, not a right. The families of our employees and the employees of our distributor partners live in Vermont and each of the other various states, the District of Columbia and Puerto Rico. We value being a contributing part of communities throughout the United States of America.

MillerCoors realizes that concerns often arise whenever there is a sincere discussion about government's role in regulating alcohol beverages and valid caring and feelings about underage drinking and the availability of alcohol beverages to our youth. We understand that you have not asked for best practices pertaining to preventing illegal underage drinking at this time. MillerCoors

Ms. Marcia Lawrence October 31, 2008 Page 6

agrees these are indeed important concerns and we pledge to continue to play a role through responsible educational programs, modeling responsible consumption of our products and drinking occasions in our advertising. We will continue to be partners working with communities and governments to reinforce proper retail sales techniques, like checking identification of purchasers as an effective step to prevent sales to underage purchasers. We agree that parents, family and peers play a positive role in teaching youth about alcohol beverages and refraining from providing alcohol beverages to those under the legal age to purchase or consume. And we agree there must be consistent enforcement of laws against illegal consumption of alcohol beverages. We trust that together we can advance best practices in all of these important areas of concern.

Flavored Malt Beverages Are Malt Beverages

MillerCoors knows of no real and substantial evidence that directly demonstrates flavored malt beverages should be regulated different from other malt beverages. We respectfully recommend to the Vermont DLC that it recognize current best practices for marketing and selling malt beverages be the same used for marketing and selling flavored malt beverages.

Sincerely,

Rochelle Marte

Government Affairs Director

Rochelle Monte

MillerCoors

Attachment F

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October 31, 2008

Michael Hogan, Commissioner Vermont Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05620-4501

RE: Comments on the Classification, Definition, Marketing, Sale and Taxation of Flavored Malt Beverages and Alcohol Energy Drinks

Dear Commissioner Hogan:

On behalf of the Vermont Wholesale Beverage Association (VWBA), thank you for the opportunity to submit comments regarding the classification, definition, marketing, sale and taxation of flavored malt beverages (FMBs) and alcohol energy drinks per the department of liquor control's memo dated September 5, 2008.

VWBA is a trade association that represents most of Vermont's beer and wine distributors. Members are Farrell Distributing Corp., Baker Distributing Corp., g.housen and DeWitt Beverage. Beer distributors have an interest in this subject because they market, distribute and pay excise taxes on FMBs and alcohol energy drinks in Vermont.

Classification and Definition of Malt Beverages

Under Vermont law, FMBs and alcohol energy drinks are properly classified as "malt beverages." "Malt beverages" are defined as "all fermented beverages of any name or description manufactured for sale from malt, wholly or in part, or from any substitute therefore, known as beer, porter, ale, and stout, containing not less than one percent nor more than 16 percent of alcohol by volume at 60 degrees Fahrenheit. However, if such a beverage has an alcohol content of more than six percent and has a terminal specific gravity of less than 1.009, it shall be deemed to be a spirit and not a malt beverage. . . . "7 V.S.A. § 2(14).

The definition of "malt beverages" requires that the beverages are "manufactured for sale from malt, wholly or in part, or from any substitute therefore." This language recognizes that "malt beverages" do not need to be made entirely of malt. FMBs are "malt beverages" since they are made in a process similar to beer (they begin as malt beverages, then are flavored). As the department noted, FMBs and alcohol energy drinks contain the same alcohol content as beer. There is no limitation in Vermont law on placing flavorings, caffeine or other stimulants in "malt beverages." Moreover, Vermont law is clear that only malt beverages with more than 16 percent

alcohol by volume or beverages with more than six percent alcohol if the terminal specific gravity is less than 1.009 are characterized as "spirits." See 7 V.S.A. § 2(14) and 7 V.S.A. § 2(20).

FMBs and alcohol energy drinks fall squarely within Vermont's definition of "malt beverages" so they are marketed, sold and taxed as "malt beverages," and have been since their introduction in the marketplace in Vermont.

With respect to FMBs, the Department's September 5th memo states: "While the total alcohol content is similar to beer (4 to 6 percent alcohol by volume), as much as 99% of the alcohol in many of these products is derived from the spirits found in the added flavoring, and not from the brewing process." This statement, which may have been accurate in 2003, is no longer correct.

In 2002, the Alcohol and Tobacco Tax and Trade Bureau completed a survey of FMBs and found, as you state, that in some instances as much as 99 percent of the alcohol in FMBs at that time was derived from alcohol in the flavorings. See 70 FR 195. However, as the department points out, in 2005, the Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB) subsequently issued Treasury Decision TTB-21 that clarified flavored malt beverages for treatment under the federal Internal Revenue Code and the Federal Alcohol Administration Act (FAA Act). See Federal Register, Vol. 70, No. 1, January 3, 2005.

The new TTB rule clarified when flavors containing alcohol can be used in producing malt beverages. For malt beverages with an alcohol content of six percent or less, no more than 49 percent of the overall alcohol content may be derived from flavors containing alcohol. This is the so-called "51/49 standard." In malt beverages with an alcohol content of more than 6 percent by volume, no more than 1.5 percent of the volume of the malt beverage may consist of alcohol derived from added flavors. 27 C.F.R. § 7.11(a); 27 C.F.R. § 25.15(b).

By way of example cited in the TTB regulation, "a finished malt beverage that contains 5.0% alcohol by volume must derive a minimum of 2.55% alcohol by volume from the fermentation of barley malt and other materials and may derive not more than 2.45% alcohol by volume from the addition of flavors and other nonbeverage ingredients containing alcohol." 27 C.F.R. § 7.11(a); 27 C.F.R. § 25.15(b).

An example of the more strict federal standard for products that contain more than six percent alcohol by volume is as follows: a malt beverage that contains 8 percent alcohol by volume must derive a minimum of 6.5 percent by volume from fermentation of barley malt and may derive not more than 1.5 percent of the alcohol from the addition of flavors. At most, in Vermont, if a beer contained 16 percent alcohol by volume it would be limited to obtaining 1.5 percent from flavors containing alcohol and 14.5 percent from the brewing process.

Since the TTB-21 rule went into effect in January, 2006, it is no longer permissible for FMBs that derive 99 percent of alcohol from flavorings as opposed to the brewing process to be treated

as beer for purposes of the Internal Revenue Code and the FAA Act. Brewers are already prevented from the unlimited use of alcohol derived from flavorings in FMB production.

With regard to alcohol energy drinks, there is no federal definition. Adding caffeine and other herbal stimulants is similar to adding any other ingredients to the product such as chocolate, herbs, spices and other food materials. We note also that there is a tradition of mixing caffeine with spirits as well. Some well known examples are Irish Coffee, rum and Coke and Red Bull and vodka.

FMBs and alcohol energy drinks are treated as "malt beverages" under the TTB definition. These beverages are made in similar ways to "malt beverages," have the same alcohol content as "malt beverages" and therefore should not be treated as "spirits." Vermont distributors have spent years and made large financial investments in marketing these brands in reliance on the department's longstanding treatment of these beverages as "malt beverages." We oppose the department reclassifying them as "spirits" and thereby taking over the right to distribute and sell these brands in Vermont. This move would negatively affect Vermont wholesalers, grocery and other retail stores and adult consumers.

VWBA members strongly support the state's right to regulate alcohol within its borders under the 21st Amendment of the U.S. Constitution. As the department points out, under the 21st Amendment the state does not need to follow the federal government's definitions of "malt beverages" or "spirits." However, since both FMBs and alcohol energy drinks are properly classified as "malt beverages" under existing Vermont law, no change to Vermont law is necessary.

If, however, the department wanted to further clarify Vermont law we urge the department to adopt the TTB standards. VWBA members believe in this particular instance it is prudent to follow the federal government's lead on characterizing FMBs. The TTB carefully sorted through over 15,000 comments on the proposed FMB rule and took years to develop it. The TTB standard has been in place for a few years and is understood by manufacturers. Adopting the federal standard in Vermont will help maintain an orderly marketplace and meet consumer expectations for consistent products.

The TTB also enforces its standard by inspecting breweries and requiring breweries to submit their formulas to the TTB when the breweries intend to produce any fermented product to which flavors containing alcohol are added. 27 C.F.R. § 25.57. If Vermont were to adopt its own standard, the state would not be able to rely on the TTB's resources and expertise to enforce the standard.

Other states have amended their laws to conform to the TTB definitions including Maryland, Oregon, Tennessee, Virginia and Washington. California treats FMBs as "distilled spirits" under its tax laws, while Utah and Maine treat FMBs different from malt beverages for the purpose of sales and taxes. All other 47 states, including Vermont, classify, define, tax, sell and market

FMBs and alcohol energy drinks as "malt beverages" as opposed to "spirits" under their respective state statutes and rules.

In sum, Vermont statutes properly characterize FMBs and alcohol energy drinks as "malt beverages." The department has a long standing practice of treating these beverages as "malt beverages." There is no reason to change the current practice since FMBs and alcohol energy drinks are properly classified as "malt beverages." If the department wants to clarify the law, VWBA supports adopting the federal TTB standards for FMBs.

Marketing and Sale

VWBA members have responsibly marketed and distributed FMBs and alcohol energy drinks to over 2,000 licensed bars, restaurants and stores in Vermont for years.

As you know, Vermont has adopted all federal regulations related to the advertising of distilled spirits, wine and malt beverages promulgated under the Federal Alcohol Administration Act. See Department of Liquor Control's Advertising Regulation No. 1. This is consistent with the legislative directive stating that one of the "Duties" of the board of liquor control, through the commissioner of the department, is to: "Make rules and promulgate regulations regarding labeling and advertising of malt or vinous beverages and spirituous liquors by adoption of federal regulations or otherwise, and collaborate with federal agencies in respect thereto and the enforcement thereof." 7 V.S.A. § 104(9).

Under the FAA Act, the Secretary of the Treasury has issued regulations at 27 CFR Parts 4, 5 and 7 that set forth the requirements with regard to labeling and advertising of wines, distilled spirits and malt beverages. These are incorporated by reference into Vermont law. A few of those regulations are particularly pertinent here. The TTB imposes a mandatory alcohol content labeling requirement for FMBs that requires that the alcohol content of FMBs be on the brand label (the front label) so consumers know how much alcohol is in the product. 27 C.F.R.§ 7.22(5). The TTB rule also prohibits the use of advertising statements, designs, devices or representations that tend to create a false or misleading impression by consumers that the malt beverage contains distilled spirits or is a distilled spirits product. 27 C.F.R. § 7.29, § 7.54. Moreover, with regard to alcohol energy drinks, a TTB announcement issued in 2005 stated that the use of advertising statements that imply that consumption of certain alcohol beverages will have a stimulating or energizing effect or will enable consumers to drink more of a product without feeling the effects of the alcohol, are misleading health-related statements that are in violation of TTB regulations 27 C.F.R. 7.54(a)(1) and 7.54(e)(2). See TTB Announcement, "Advertising Malt Beverages Containing Ingredients Associated with Non-Alcohol Energy Drinks," May 18, 2005. The TTB reviews labels and advertisements to ensure they meet the requirements of the law and has the authority to take appropriate enforcement action.

Additional advertising standards for products sold in Vermont may be found in the Department's Advertising Regulation No. 2, which apply to FMBs and alcohol energy drinks.

We believe these federal advertising standards that Vermont has adopted, along with those additional standards in DLC's Advertising Regulation No. 2, constitute the best practices for the marketing and sale of these and all products that contain alcohol.

Adult consumers responsibly enjoy FMBs and alcohol energy drinks. In Vermont, there is a wide range of these products available for adult consumers to choose from. These products, like all alcohol products that VWBA members distribute, are sold through the three tier system – from licensed manufacturer, to licensed distributor to licensed retailer. VWBA strongly supports Vermont's three tier regulatory system that limits access to alcohol to those under the age of 21.

In the 2007 Vermont Youth Risk Behavior Survey, 3 percent of underage females and 8 percent of underage males reported that they got their alcohol from a store, liquor store and restaurant combined. See 2007 Vermont Youth Risk Behavior Survey. Vermont Department of Health, p. 30. We all need to work together to ensure that no person under the age of 21 obtains alcohol from any retail outlet in Vermont. But that alone will not solve this complex problem. Seventy percent of students under the age of 21 who drank within the 30 days prior to the survey reported that someone gave them alcohol or they gave someone money to buy alcohol for them. Id. Another 21 percent got the alcohol from home. Id. Reclassifying FMBs as "spirits" rather than "malt beverages" and having them sold in state liquor stores will not stop underage drinking since those under the age of 21 are in the vast majority of instances getting these and other alcohol products from adults who can legally purchase the products.

These products are not marketed towards underage drinkers. Vermont's beer and wine distributors are family owned businesses that care deeply about the communities they serve. We take very seriously the issue of underage drinking. We have worked with local businesses, organizations and government agencies to initiate alcohol awareness activities in Vermont for decades. For example, Vermont distributors provide wristbands and ID books with color photographs of drivers' licenses from all 50 states and Canada to stores, bars and restaurants to help sellers effectively identify those patrons of legal purchase age and stop sales to minors. We host in-school presentations by speakers to educate and motivate young people to make smart choices and encourage respect for the law. We provide materials developed by experts in the fields of education, family therapy, law enforcement and student health to help parents talk with their teens about not drinking and making responsible decisions. On an annual basis, we also sponsor hundreds of advertisements in local newspapers, radio and television to address underage drinking and drunk driving. This summary is only a fraction of these efforts. We'd be happy to provide you with more information about any of these programs.

Taxation

As you know, Vermont has a tiered tax structure for "malt beverages." Malt beverages that contain six percent or less alcohol by volume are taxed at 26.5 cents per gallon. 7 V.S.A. § 421(a). Malt beverages containing more than six percent but not more than 16 percent alcohol by volume are taxed at 55 cents per gallon (the same as wine). *Id.* Finally, malt beverages with more than 16 percent alcohol by volume are deemed to be "spirits" and taxed at the 25 percent

gross revenue "spirituous liquor" rate. 7 V.S.A. § 422. This tax structure recognizes the principle that as the alcohol content of a product increases so should the tax, a concept we support. All "malt beverages" are also subject to a six percent sales tax.

If Vermont adopted the federal standard for FMBs then these products would be consistently taxed as "malt beverages" on both the state and federal level as they are today. We believe it is only fair that FMBs that have the same alcohol content as more traditional beer be treated the same for tax purposes. In turn, products properly characterized as "spirits," that contain significantly more alcohol by volume, should be taxed at a higher rate than beer or wine. However, since FMBs and alcohol energy drinks are "malt beverages" they should continue to be taxed at the malt beverage rates and not the "spirits" rate.

The department's request for comments dated September 5, 2008, did not offer a specific proposal for treatment of FMBs or alcohol energy drinks for comment. If the department develops a specific proposal, VWBA members would be happy to submit supplemental comments on the proposal. We are also available at your convenience to provide more information or work with the department regarding this issue.

Thank you for considering these comments. Please let me know if you have questions.

Sincerely,

Clare A. Buckley

Claud Buckley

cc: VWBA Members



Mark Anthony Brands Inc.

4th Floor - 159 South Jackson Street, Seattle, WA, USA 98104 phone: 206.267.4444 fax: 866.350,4095

November 3, 2008

Via E-mail

Michael J. Hogan, Commissioner State of Vermont Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05620-4501 Attn: Marsha Lawrence

RE: Comments on the Classification, Definition, Marketing, Sale and Taxation of Flavored Malt Beverages

Dear Commissioner Hogan:

On behalf of Mike's Hard Lemonade Co., I thank you for the opportunity to comment regarding the Department of Liquor Control's (the "Department") review of Vermont's current regulatory and tax schemes for flavored malt beverages ("FMBs").

As we understand, the Department is being encouraged by certain groups to reclassify FMBs as spirits in an effort to discourage underage drinking. The letter supplied to you on behalf of the Flavored Malt Beverage Coalition (the "Coalition"), of which we are a member, addresses quite comprehensively the compelling historical and business rationales for leaving intact Vermont's existing regulatory and tax scheme. It provides ample and thoughtful documentation that I am sure will prove useful in helping the Department separate fact from fiction concerning FMBs. Recently the California Board of Equalization ignored the facts, creating an irrational and expensive administrative process that will raise no revenues and cost the state millions to administer. We hope that Vermont will avoid making a similar mistake.

The question of whether an FMB is a malt beverage or a spirit can easily be answered by looking at the legal definitions of the terms. By federal definition, an FMB is a beer deriving a majority of its alcohol content from fermentation with a maximum of half a tablespoon per 11.2oz bottle of added flavoring – flavorings like those found on grocery store shelves across the country. Vanilla extract, for example, is 35% alcohol by volume, but is neither taxed nor distributed like a distilled spirit. Therefore, the addition of it to a beer clearly does not turn that beer into a spirit, any more than the addition of vanilla flavoring to a cupcake makes it a shooter.

Definitions aside, some of the lobbying to influence the debate is egregiously inaccurate and I am compelled to address the allegations directly. For example, a recent lobbying communiqué circulated via email depicts the mike's hard lemonade logo (along with several other brands in the FMB category) followed by the language "The alcohol industry gets away with murder when states allow

Michael J. Hogan October 31, 2008 Page 3

take care to prevent my child from seeing adults consuming alcohol, furthermore I require an accounting of all his income and expenditures. I speak with him and his friends frankly about both the sought after effects and the dangers of alcohol consumption. Responsible parenting and education are the most functional ways to protect youth from everything dangerous.

The only fair and appropriate way to tax alcohol beverages is based on their alcohol content by volume. Attempting to tax capriciously based on taste unfairly punishes legal drinking age consumers who enjoy a break from traditional-tasting malt beverages.

We urge you not to re-create California's costly and fruitless administrative nightmare. Keep flavored malt beverages properly classified and taxed as malt beverages. Thank you.

Sincerely.

Angela Hilton

Director of Regulatory Compliance

Mark Anthony Brands Inc. dba Mike's Hard Lemonade Co.



Attachment H



ADVERTISING AND MARKETING CODE

JANUARY 2006 EDITION

Introduction

Beer is a legal beverage meant to be consumed responsibly. Its origins are ancient, and it has held a respected position in nearly every culture and society since the dawn of recorded history.

In the United States, beer is a mature product category with broad cultural acceptance and a history of memorable and distinctive advertising, that because of its humor and creativity, has long been a favorite among American adult consumers. Advertising and marketing materials are legitimate efforts by brewers to inform consumers of the particular styles and attributes of numerous beers and other malt beverages that are available. Brewer advertising and marketing also foster competition, persuade adult consumers of legal drinking age to try particular brands, and maintain customer loyalty.

Brewers should employ the perspective of the reasonable adult consumer of legal drinking age in advertising and marketing their products, and should be guided by the following basic principles, which have long been reflected in the policies of the brewing industry and continue to underlie this Code:

- Beer advertising should not suggest directly or indirectly that any of the laws applicable to the sale and consumption of beer should not be complied with.
- Brewers should adhere to contemporary standards of good taste applicable to all commercial advertising and consistent with the medium or context in which the advertising appears.
- Advertising themes, creative aspects, and placements should reflect the fact that brewers are responsible corporate citizens.
- Brewers strongly oppose abuse or inappropriate consumption of their products.

The term "beer" as used in this Code, covers all types of malt beverages including, but not limited to, beers, ales, porters, stouts, flavored malt beverages, and various specialty products. The production, distribution, and sale of beer in the United States are subject to extensive laws and regulations, enforced by federal, state, and local governments. Federal and state laws establish a three-tiered distribution system for beer. The first tier is composed of brewers and beer importers, which are referenced throughout this Code as "brewers." The second tier is made up of wholesale distributors, and the third tier includes a wide range of licensed retail outlets, at which beer is sold to consumers. Companies in each tier of this distribution system are required by law to maintain their commercial independence. The Beer Institute encourages all with whom brewers do business to adhere to the law, as well as this voluntary Advertising and Marketing Code.

Guidelines

1. These guidelines apply to all brewer advertising and marketing materials, including Internet and cyberspace media. In applying these guidelines, creative elements are to be considered in the overall context of the advertisement or marketing materials. Humor, parody, satire, and all other advertising themes and devices should be readily identifiable as such by reasonable adults of legal drinking age.

These guidelines do not apply to educational materials or televised, printed, or audio messages of a non-brand specific nature; nor to materials or messages designed specifically to address issues of alcohol awareness, abuse, drunk driving, underage drinking, or over-consumption.

- 2. Beer advertising and marketing materials should portray beer in a responsible manner:
 - a. Beer advertising and marketing materials should not portray, encourage, or condone drunk driving.
 - b. Although beer advertising and marketing materials may show beer being consumed (where permitted by media standards), advertising and marketing materials should not depict situations where beer is being consumed rapidly, excessively, involuntarily, as part of a drinking game, or as a result of a dare.
 - c. Beer advertising and marketing materials should not portray persons lacking control over their behavior, movement, or speech as a result of consuming beer or in any way suggest that such conduct is acceptable.
 - d. Beer advertising and marketing materials should not portray or imply illegal activity of any kind by an individual prior to, during, or after the individual consumes, purchases, or is served beer, unless the portrayal or implication of illegal activity is a basic element or feature of a parody or spoof and is readily identifiable as such.

- e. Beer advertising and marketing materials should not portray beer drinking before or during activities, which for safety reasons, require a high degree of alertness or coordination.
- f. Retail outlets where beer is served or sold portrayed in advertising should not be depicted as unkempt or unmanaged.
- 3. Brewers are committed to a policy and practice of responsible advertising and marketing. As a part of this philosophy, beer advertising and marketing materials are intended for adult consumers of legal drinking age. Advertising or marketing materials should avoid elements that appeal primarily to persons under the legal drinking age. Advertising and marketing materials appeal primarily to persons under the legal drinking age if they have special attractiveness to such persons beyond their general attractiveness for persons above the legal drinking age.
 - a. In considering whether beer advertising and marketing materials appeal primarily to persons under the legal drinking age, brewers should take into account the following elements among others:
 - Symbols
 - Language
 - Music
 - Gestures
 - Entertainers or celebrities
 - Cartoon characters
 - Groups or organizations
 - b. Beer advertising and marketing materials should not depict Santa Claus.
 - c. Beer advertising and marketing materials shall only be placed in magazines, on television, or on radio where at least 70% of the audience is expected to be adults of legal drinking age. A placement will be considered reasonable if the audience composition data reviewed prior to placement met the percentages set forth above. What constitutes a reasonable basis for placement depends on the medium and available data for that medium. Buying guidelines for the implementation of this section will be distributed in conformance with the dissemination provisions of this code. The brewer placing advertising or marketing materials in magazines, on television, or on radio shall conduct periodic after-the-fact audits, at least semi-annually where possible, of substantially all of its placements. If a brewer learns that a placement did not meet the Code standard, it will take steps to prevent a reoccurrence. These steps may include, but are not limited to: investigating exceptions; canceling placements on programs with unacceptable audience composition; reallocating purchases to a different and acceptable time slot; contacting the media outlet/station with regard to placement errors or possible reporting errors; reemphasizing audience composition requirements with media buyers and media outlets; and continued monitoring of a program or time slot to determine whether buys should be canceled or reallocated.

- d. Models and actors employed to appear in beer advertising and marketing materials should be a minimum of 25 years old, substantiated by proper identification, and should reasonably appear to be over 21 years of age.
- e. Beer should not be advertised or marketed at any event where most of the audience is reasonably expected to be below the legal drinking age. This guideline does not prevent brewers from erecting advertising and marketing materials at or near facilities that are used primarily for adult-oriented events, but which occasionally may be used for an event where most attendees are under age 21.
- f. No beer identification, including logos, trademarks, or names should be used or licensed for use on clothing, toys, games or game equipment, or other materials intended for use primarily by persons below the legal drinking age.
- g. Brewers recognize that parents play a significant role in educating their children about the legal and responsible use of alcohol and may wish to prevent their children from accessing Internet web sites without parental supervision. To facilitate this exercise of parental responsibility, Beer Institute will provide to manufacturers of parent control software the names and web site addresses of all member-company web sites. Additionally, brewers will require disclosure of a viewer's date of birth at the entry to their websites and will post reminders at appropriate locations in their web site indicating that brewer products are intended only for those of legal purchase age. These locations include entrance into the web site, purchase points within the web site, and access into adult-oriented locations within the web site, such as virtual bars.
- 4. Beer advertising and marketing materials should not make the following exaggerated product representations:
 - a. Beer advertising and marketing materials should not convey the impression that a beer has special or unique qualities if in fact it does not.
 - b. Beer advertising and marketing materials should make no scientifically unsubstantiated health claims.
 - c. Beer advertising and marketing materials may portray beer as a part of personal and social interactions and experiences, and a brand may be portrayed in appropriate surroundings, as a superior choice to compliment a particular occasion or activity. Beer advertising and marketing materials should not, however, claim or represent that individuals cannot obtain social, professional, educational, athletic, or financial success or status without beer consumption.
 - d. Beer advertising or marketing materials should not claim or represent that individuals cannot solve social, personal, or physical problems without beer consumption

- 5. Beer advertising and marketing materials:
 - a. Should not contain language or images that are lewd or indecent in the context presented and the medium in which the material appears.
 - b. May contain romantic or flirtatious interactions but should not portray sexually explicit activity as a result of consuming beer.
- 6. Beer advertising and marketing materials should not contain graphic nudity.
- 7. Beer advertising and marketing materials should not employ religion or religious themes.
- 8. Beer advertising and marketing materials should not disparage competing beers.
 - a. Comparisons or claims distinguishing competing beers should be factual.
 - b. Beer advertising and marketing materials should never suggest that competing beers contain objectionable additives or ingredients.
- 9. Beer advertising and marketing materials should not disparage anti-littering and recycling efforts. Beer advertising and marketing materials should not show littering or otherwise improper disposal of beer containers, unless the scenes are used clearly to promote anti-littering and/or recycling.

10. College marketing

Beer advertising and marketing materials on college and university campuses, or in college-owned media, should not portray consumption of beer as being important to education, nor shall advertising directly or indirectly degrade studying. Beer may be advertised and marketed on college campuses or at college-sponsored events only when permitted by appropriate college policy.

- a. On-campus promotions/sponsorships
 - 1) Brewer sponsored events: Brewer sponsorship of on-campus events or promotions at on-campus licensed retail establishments shall be limited to events conducted in accord with this Code, state law, and applicable institutional policies. In their content and implementation, company on-campus promotions and sponsorships shall not encourage the irresponsible, excessive, underage, or otherwise illegal consumption of beer.
 - 2) Branded products: Beer-branded promotional products such as key chains, clothing, posters, or other tangible goods designed to promote specific beer brands, are intended only for adults of legal drinking age. Distribution of these items will therefore take place only at licensed retail establishments or where distribution is limited to those over the legal drinking age, and otherwise conforms to applicable laws and institutional policies.

3) <u>Tastings</u>: Tasting events at which product samples are provided should occur at licensed retail establishments or where distribution is limited to those over the legal drinking age, or otherwise conforms to applicable laws and institutional policies.

b. Brewer sales representatives.

Brewer sales representatives who undertake sales calls on or near a college campus must be adults of legal drinking age, and shall conduct sales activities in conformity with this Code.

11. Billboards

Billboard advertisements by brewers shall be located at least 500 linear feet from established and conspicuously identified elementary or secondary schools, places of worship, or public playgrounds.

12. Product placement

Movies and television programs frequently portray consumption of beer and related signage and props in their productions. Brewers encourage producers to seek approval before using their products, signage, or other props in artistic productions. While producers sometimes seek prior approval from brewers, the final artistic and editorial decisions concerning product portrayal are always within the exclusive control of the movie or television producers.

With regard to those producers who seek brewer approval or those brewers who seek placement opportunities, product placement will be guided by the following principles:

- a. <u>Case by Case Approval</u>: Brewers will approve or reject product placement in specific projects or scenes on a case by case basis, based upon the information provided by the movie or television program's producers.
- b. <u>Portrayal of drinking and driving</u>: Brewers discourage the illegal or irresponsible consumption of their products in connection with driving. Consistent with that philosophy, brewers will not approve product placement where the characters engage in illegal or irresponsible consumption of their products in connection with driving.
- c. <u>Underage drinking</u>: Brewers discourage underage drinking and do not intend for their products to be purchased or consumed illegally by people below the legal drinking age. Consistent with that philosophy, brewers will not approve product placement which portrays purchase or consumption of their products by persons who are under the legal drinking age.

- d. Primary appeal to persons below the legal drinking age: Brewers discourage underage drinking and do not intend for their products to be purchased or consumed illegally. Consistent with that philosophy, brewers will not approve product placement where the primary character(s) are under the legal drinking age or the primary theme(s) are, because of their content or presentation, specially attractive to persons below the legal drinking age beyond the general attractiveness such themes have for persons above the legal drinking age.
- e. <u>Portraying alcoholism/alcohol abuse</u>: Brewers do not want their products to be abused. Consistent with that philosophy, brewers will not approve product placement where characters use their products irresponsibly or abusively or where alcoholism is portrayed, unless the depiction supports a responsible-use message.
- f. Measured media: Brewers will not request or approve a product placement in any measured media unless the placement is consistent with the Buying Guidelines that accompany this Code and at least 70% of the audience is reasonably expected to be adults of legal drinking age.

Code Compliance and Dissemination

Each member of the Beer Institute is committed to the philosophy of the Code and is committed to compliance with the Code. When the Beer Institute receives complaints that an advertisement or marketing practice is inconsistent with a provision of the Code, the Institute's longstanding practice is to promptly refer such complaints in writing to the member company or to non-member brewers for review and a response. To facilitate this process, the Beer Institute maintains a toll-free number (1-800-379-2739) and a web site at www.beerinstitute.org.

If the proponent of a complaint is dissatisfied with the response received from a Beer Institute member or a non-member brewer, further consideration may be requested by the Beer Institute Code Compliance Review Board. The Board is composed of individuals with a variety of experience who are independent of the brewing industry. The Board will review complaints from the perspective of the reasonable adult consumer of legal drinking age and decide whether or not such complaints identify advertisement(s) or marketing material(s) that are inconsistent with one or more of the guidelines in the Code. Board decisions will be posted on the Beer Institute web site.

Copies of this code shall continue to be given to brewery employees, wholesale distributors, and outside agencies whose responsibilities include advertising and marketing beer, as well as to any outside party who might request it.

Beer Institute 122 C Street, N.W., Suite 350 Washington, DC 20001-2150 202-737-2337 Attachment I



October 30, 2008

Vermont Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05620-4501

Submitted Via Email

RE: Request for Public Comment on the Classification, Definition, Marketing, Sale, and Taxation of Flavored Malt Beverages and Alcohol Energy Drinks

To Whom It May Concern:

On behalf of Marin Institute, I am writing to strongly support the need to correctly classify alcopops or "flavored malt beverages" as distilled spirits. Marin Institute has been a leader in alcohol policy for the past 20 years, and has provided much of the research basis for the need to properly classify alcopops as distilled spirits.

As a point of clarification, because alcoholic energy drinks (such as "Sparks") are classified as malt beverages by the federal government, we see no need to distinguish such products from alcopops (what industry refers to as "flavored malt beverages") when considering proper classification at the state level.

Our main concern is to protect the health and safety of under-aged youth. Correctly classifying alcopops as distilled spirits would be a huge step forward in doing so. These sweetened, often bubbly and fruit-flavored drinks are designed to resemble soft drinks. They fuel the underage drinking epidemic by serving as a transition for young people from soft drinks to alcohol.

Currently, underage drinking in Vermont costs more than \$200 million each year. These costs stem from a wide variety of harm, including motor vehicle crashes, fetal alcohol syndrome, violent and property crime, suicide, falls, other injuries, and treatment programs. Correctly classifying alcopops could significantly reduce these harms and help protect the health and safety of both youth and adults in Vermont.

The alcohol industry labels alcopops as "flavored malt beverages" in the U.S. in order to take advantage of more favorable tax laws. In Vermont and throughout the United States, beer is taxed much lower than distilled spirits and is sold in grocery and convenient stores. However, in other countries, manufacturers do not call alcopops "malt beverages," and indeed some companies proudly market their products as containing spirits. For example, while Smirnoff Ice is touted for containing vodka in the U.K., the exact same brand in the U.S. is labeled as a malt beverage. By making products that don't taste or

look like beer, while still convincing regulators to classify alcopops as beer, the alcohol industry is engaging in a deceptive charade aimed at keeping these drinks highly affordable and accessible to youth.

By correctly classifying alcopops as distilled spirits, Vermont would join several other states as leaders in the nation. Maine, California, and Utah have all decided to properly classify alcopops as distilled spirits and several other states are considering doing so, including New Mexico, Arkansas, and Nebraska.

In addition, the U.S. is lagging behind other countries that have already taken action on this issue. Germany, Switzerland, Denmark, France, the UK, and most recently Australia have all significantly increased the tax on alcopops in the last few years, and other nations (such as the Netherlands and Finland) have considered proposals to do so. For those countries, where data is available, the results of higher taxes are compelling:

- In Germany, in 2004, the government also created a new alcohol classification and increased alcopops taxes over spirits. The following year, alcopop sales dropped 75 percent and alcopop consumption went down 50 percent among teenagers because, according to one survey, "alcopops became too expensive."
- In the United Kingdom, alcopops were properly classified as distilled spirits in 2002. Over the next four years, prices increased significantly and sales dropped by 43 percent.
- In Switzerland, the government created a new alcohol category to address youth consumption of alcopops, increasing the tax to four times that of spirits.
 Following this increase, imports of alcopops dropped by about 60 percent.

We have every reason to believe that such success could be repeated in Vermont. But it's not enough just to increase the taxes, it's also critical that the products be removed from grocery and convenient stores, where youth have the greatest access to these products. In Utah, another control state, alcopops may only be sold in the state stores.

We urge you to correctly classify alcopops as distilled spirits for the health and safety of Vermont's youth. Thank you for the opportunity to submit comments.

Sincerely,

Michele Simon, JD, MPH Research and Policy Director

24 Belvedere Street | San Rafael, California 94901 | 415-456-5692 | fax 415-456-0491 www.MarinInstitute.org

Attachment J

Oct 30, 2008

Ms. Marcia Lawrence Vermont Department of Liquor Control Montpelier, VT 05620-4501

Dear Ms. Lawrence,

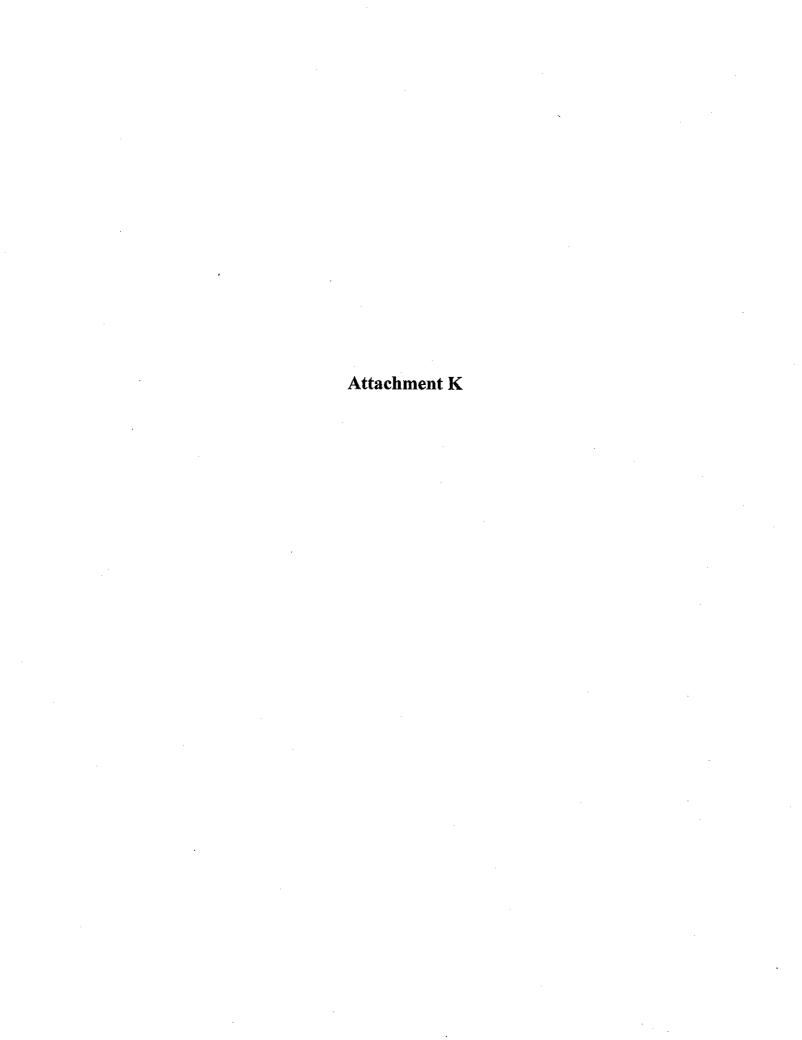
Please reclassify flavored malt beverages (or alcopops) as distilled spirits, not beer. This simple change will help protect Vermont youth from the dangers of alcohol use.

The alcohol industry has evaded proper taxation on these products for too long. Research shows that underage drinkers consume 47% of all alcopops. The American Medical Association has expressed a concern that "hard-liquor brands are using these sweet-flavored malt beverages as 'gateway' beverages to attract less-experienced drinkers," especially teenage girls.

Reclassifying alcopops will increase their cost and restrict where they can be sold. This will help protect the youth of Vermont. Please reclassify FMBs as distilled spirits, and protect the health and safety of Vermont youth.

Sincerely,

Ms. Margaret Hammond 14 Lewis St Springfield, VT 05156-3017





State of Vermont Department of Health (Commissioner's Office) 108 Cherry Street-PO Box 70 Burlington, VT 05402-0070 Health Vermont.gov [fax] 802-863-7281 [fax] 802-951-1275 Agency of Human Services

COMMENT ON THE CLASSIFICATION, DEFINITION, MARKETING, SALE, AND TAXATION OF FLAVORED MALT BEVERAGES AND ALCOHOL ENERGY DRINKS

The Office of Alcohol and Drug Abuse Programs (ADAP) of the Vermont Department of Health strongly supports the reclassification of flavored malt beverages and alcohol energy drinks from "malt beverages" to spirits for the purpose of marketing, sales, and taxation.

Previous research from the Marin Institute in support of a similar and successfully implemented proposal in California determined that reclassification would decrease overall consumption of these beverages by 35% and subsequently reduces underage consumption and associated harms. These harms include alcohol-related traffic accidents (injuries and fatalities), other alcohol-related injuries, and high-risk and unwanted sex among others. The California analysis also determined that underage drinkers consume 5.5 times more flavored malt beverages (also called "alcopops") per year than adult drinkers and that 47% of all alcopops are consumed by underage drinkers. Due in part to these data, the California Board of Equalization recently reclassified alcopops as spirits. The other part of the equation is that although they are called "flavored malt beverages" by the industry, most, if not all, of the alcohol content in these beverages are derived from distilled spirits and not from brewing. Therefore, it seems appropriate to consider these beverages as spirits.

These beverages appear to be marketed primarily to adolescents and young adults. Survey data suggest that adolescents as young as 13 prefer the taste of alcopops to beer by almost a 2 to 1 margin even though the alcohol content is similar. Furthermore, 78% of 8th graders who are drinkers consume alcopops compared to 36% of drinkers who are 25-30 years of age².

The American Medical Association has expressed a concern that "hard-liquor brands are using these sweet-flavored malt beverages as 'gateway' beverages to attract less-experienced drinkers." (AMA, 2004)². The AMA report also presents survey data showing teen girls are particularly attracted to alcopops compared to teen boys. While the alcohol industry asserts that they are marketing to legal-age drinkers, surveys indicate that underage girls see and remember significantly more ads for alcopops than adult women. Indeed, industry spokesman have been clear about the niche alcopops appeal to:

"The beauty of this category is that is brings in new drinkers, people who really don't like the taste of beer" (Marlene Coulis, Director of New Products, Anheuser-Busch, quoted in Advertising Age, April 22, 2002.





"With younger drinkers, their palates haven't quite matured yet to drinks like bourbon. Malternatives [alcopops] are a sweeter drink, they're easier to drink and it takes less time to mature the taste." (Trish Rohrer, Brand-Development Manager, Boston Beer Company, quoted in Restaurants USA, May, 2002).

There are international and domestic precedents for reclassifying alcopops as spirits for the purpose of marketing, sales, taxation, and prevention. Germany, Austria, France, Great Britain, Ireland, Australia, and Switzerland have already dramatically increased taxes on alcopops in order to directly reduce their appeal to adolescents. In Germany the reduction in sales after tax increases of two alcopop beverages resulted in their being pulled from the market by the distiller. Furthermore, data from countries where alcopop taxes resulted in a significant decline in consumption showed that there was not a parallel increase in other forms of alcohol. In the Unites States, Maine, Utah, and, as we have already noted, California recently reclassified alcopops as spirits. If the administrative action in California successfully withstands industry court challenges, a portion of the income generated by increased taxes on these products will be used to fund prevention and enforcement efforts in the state. Several other states are currently considering administrative and/or legislative action to reclassify alcopops as distilled spirits.

ADAP also strongly supports the reclassification of alcohol energy drinks. These beverages are specifically marketed to young people and have become the target of several state attorneys-general investigations as well as a lawsuit filed by the Center for Science in the Public Interest. These drinks contain more alcohol than standard beer as well as several ingredients that may not have been approved by the relevant federal authority. In February of this year, Anheuser-Busch voluntarily stopped production, distribution, and sale of two alcohol energy products as a result of the threatened lawsuit and state investigations. 6 A recent study showed that college students who consumed alcohol energy drinks were more likely to binge drink, get drunk more often, drink more per occasion, and suffer significantly more alcoholrelated negative consequences than students who did not drink these beverages. Those who consumed alcohol energy drinks were twice as likely to ride with an intoxicated driver, get hurt or injured, require medical treatment, and take advantage of another sexually than drinkers of alcohol alone⁷. Also, caffeine may mask the intoxicating effects of alcohol leading to a belief that an individual is less drunk than they really are. This can lead to increased consumption and, in turn, increased risky behavior and adverse health consequences.⁸ Mixing alcohol with stimulants in a pre-packaged delivery system combined with opportunistic marketing to a vulnerable group appears to be a dangerous idea. We note also the similarity in appearance of the alcohol energy drinks with regular energy drinks which has resulted in confusion among retailers, consumers, and parents. For example, following a presentation on energy drinks at a middle school in California, teachers checked during lunch time and found 12 of 43 energy drinks being consumed by students contained alcohol¹⁰.

VERMONT

In Vermont, since spirits are distributed and sold exclusively through State controlled liquor stores, reclassification would significantly restrict the number of outlets that could sell alcopops and alcohol energy drinks. Reduction of access and increases in the taxation rate is likely to have a major impact on attenuating consumption of these beverages in general, but more importantly, will diminish consumption among underage individuals. Any reduction in underage consumption of alcohol will have a net positive impact on the health and welfare of Vermonters.



¹ www.marininstitute.org/alcopops

² http://alcoholpolicymd.com/press_room/Press_releases/girlie_drinks_release.htm

³ http://www.ias.org.uk/resources/publications/theglobe/globe200802/gl200802_p25.html

⁴ http://www.ias.org.uk/resources/publications/theglobe/globe200802/gl200802_p25.html

⁵ http://www.dw-world.de/dw/article/0,2144,1291395,00.html

⁶ http://www.cspinet.org/new/200809082.html

⁷ <u>http://cspinet.org/new/pdf/obrien.pdf;</u> OBrien et al. (2008) Caffeinated cocktails: Energy drink consumption, high-risk drinking, and alcohol-related consequences among college students. *Academic Emergency Medicine*, 15, 453-460

 $^{^8}$ http://www.jointogether.org/news/yourturn/announcements/2007/alcohol-energy-drinks-and.html

⁹ http://www.jointogether.org/news/headlines/inthenews/2007/confused-retailers-sell.html

¹⁰ http://www.venturacountylimits.org/pdfs/alcohol_energy_drinks_dec07.pdf





A COMMUNITY RESPONSE TO CRIME

ADDISON COUNTY 282 Boardman St. Middlebury, VT 05753 Tel: 388-3888

BENNINGTON COUNTY 439 Meln St. Bennington, VT 05201 Tel: 447-1595

CALEDONIA & ESSEX COUNTIES 24 Bagley St. St. Johnsbury, VT 05819 Tel: 748-8732

CHITTENDEN COUNTY 184 King St. Burlington, VT 05402 Tel: 864-1585

FRANKLIN COUNTY 5 Lemnah Dr. St. Albans, VT 05478 Tel: 527-5580

GRAND ISLE COUNTY P.O. Box 171 North Hero, VT 05474 Tel: 372-4955

LAMOILLE COUNTY P.O. Box 148 Hyde Park, VT 05655 Tel: 888-5871

ORANGE COUNTY P.O. Box 58 Chelsee, VT 05038 Tel: 685-3172

ORLEANS COUNTY 343 Main St. Newport, VT 05855 Tel: 337-7316

RUTLAND COUNTY P.O. Box 761 Rufland, VT 05702 Tel: 786-3840

WASHINGTON COUNTY P.O. Box 1026 Montpeller, VT 05601 Tel: 828-0600

WINDHAM COUNTY P.O. Box 6008 Brailleboro, VT 05302 Tel: 257-0361

WINDSOR COUNTY P.O. Box 474 White River Junction, VT 05001 Tel: 295-5078

Vermont Association of Court Diversion Programs, Inc.

October 29, 2008

Vermont Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05601

Re: Classification of Flavored Malt Beverages and Alcohol Energy Drinks

The Vermont Association of Court Diversion Programs supports the reclassification of flavored malt beverages and alcohol energy drinks from malt beverage to spirits.

The 14 county court diversion programs, which make up the association, have extensive experience working with young people dealing with problems arising from the consumption of alcohol. Each year, over 3,000 young people participate in the Teen Alcohol Safety Program, after being ticketed for underage drinking. In addition, for many of the 2,000-plus people who participate in Court Diversion, alcohol use is an underlying factor that contributed to their criminal behavior. Recognizing substance abuse as a serious problem in our communities, court diversion programs work closely with law enforcement and other community partners to prevent risky and underage drinking.

We encourage the State to take all efforts to support existing under-age drinking laws by ensuring that alcohol is marketed, priced, and sold in a manner that limits consumption to those of legal-drinking age. Classifying flavored malt beverages and alcohol energy drinks as spirits, thereby restricting their sale to liquor outlets, will help to limit young people's access to these drinks. Clerks in liquor outlets are less likely to confuse these products with non-alcoholic beverages and be more attentive to whom they are selling. As the alcohol content of these drinks derives from distilled spirits, not malt beverages, there is no defensible reason to classify these products as malt beverages.

Sincerely,

Willa Farrell

Executive Director



New Directions for Barre

We Support the Change to classify, tax, market, and sell malt-beverages containing any amount of distilled spirits as spirituous beverages!

- According to the 2007 Youth Risk Behavior Survey for 8th graders in Barre City, 18.4% of 8th graders drank alcohol in the past 30 days.
- → Among the 18.4% who drank 27.3% drank malt beverages.
- "With younger drinkers, their palates haven't quite matured yet to drinks like bourbon Malternatives [alcopops] are a sweeter drink, they're easier to drink and it takes less time to mature the taste." (Trish Rohrer, Brand-Development Manager, Boston Beer Company, quoted in Restaurants USA, May, 2002).

Since a significant amount of the alcohol content is Flavored Malt-Beverages (Smirnoff Ice, Bacardi Silver, or Hard Lemonade) comes from distilled spirits, they should be taxed and be subject to limited availability as spirituous beverages. Please join us in keeping Barre Youth safe.

Name Sever Magro Phone 229-6219
Town Ment Delas Email Sarah C Sarah com

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Name Compile Steele fort Phone 802-479-1245

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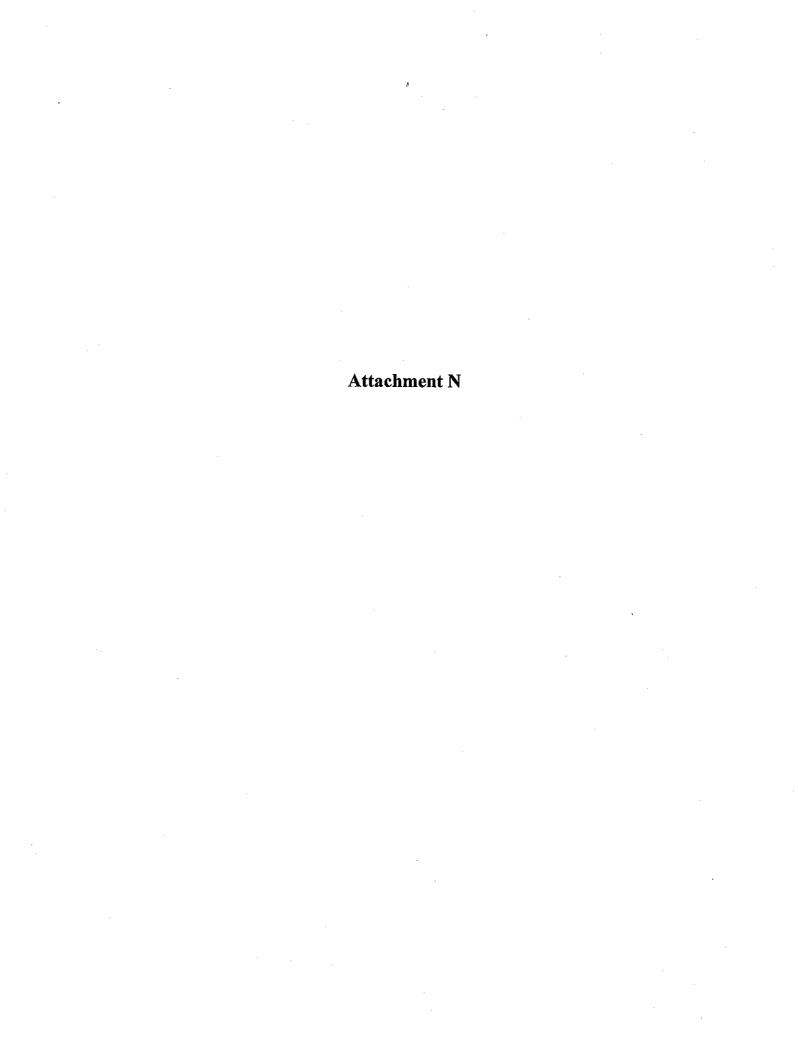
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Town Barre TOWN	Name MEHY Weeks
Email SwiceKSTI Echartumet	Phone 479-9301





Opening Minds – Changing Behaviors

Marcia Lawrence Executive Assistant Vermont Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05260-4501

RE: Comment on the classification of flavored malt beverages and alcohol energy drinks and best practices for their distribution, sales, marketing, and taxation.

Dear Commissioner Hogan and Ms. Lawrence,

Thank you for the opportunity for community member input on this important issue which effects the lives of thousands of Vermont youth, young adults and ultimately the state of Vermont.

On behalf of the Southshire Substance Abuse Coalition and it's over 50 members I'd like to share our comments and recommendations regarding flavored malt beverages and alcohol energy drinks.

As you are aware both flavored malt beverages and alcohol energy drinks have come under a large amount of scrutiny recently for their classifications, marketing and the large number of underage youth who consume these products. As such there has been an increase in discourse and research about these drinks and their distribution, sales, marketing, taxation and most importantly impact on those who consume these products. The issue of greatest concern is the harm to consumers.

According to a recent fact sheet publication by the Center for Science in the Public Interest regarding alcoholic energy drinks (http://cspinet.org/new/pdf/alcospeed_fact_sheet.pdf):

- "No scientific evidence ensures consuming stimulants and alcohol together is safe."
- "The interaction between alcohol and energy drinks found that stimulants did not reduce the negative effects of alcohol on motor coordination skills and visual reaction times."

This means people may not feel as intoxicated as they are and can lead to increased risky behaviors such as violence, unwanted sex, and drunk driving.

Another issue of concern regarding these drinks is their current marketing and distribution. Flavored malt beverages and alcoholic energy drinks bear striking resemblance in their packaging to popular non-alcoholic energy drinks and juice drinks. A clear example of this was in April 2008 in Ann Arbor, Michigan where a university professor accidentally bought his seven year old son a Mike's Hard Lemonade thinking it was regular lemonade

(http://www.mlive.com/news/index.ssf/2008/04/ann_arbor_man_gives_7yearold_s.html).

In addition flavored malt beverages and alcoholic energy drinks are being displayed at the order of distributors to be placed directly next to nonalcoholic energy drinks and juice drinks. It seems apparent these lines are being blurred intentionally by alcohol producing companies.

As flavored malt beverages and alcoholic energy drinks contain large amounts of distilled spirits, clearly they should be classified and taxed as such. Even under current Vermont law which defines spirits as "beverages for sale containing more than one percent of alcohol obtained by distillation, by chemical synthesis, or through concentration by freezing," these drinks should be classified as "spirits." Perhaps some language needs to be added for further clarification or Vermont should adopt the federal standard as listed by the Alcohol and Tobacco Tax and Trade Bureau.

Throughout the country states are taking action to classify and tax these drinks as spirits. Last year California, Utah and Ohio took these steps and this year through community advocacy and a lawsuit against the Nebraska Liquor Control Commission, the state of Nebraska is considering correctly classifying and taxing these drinks (http://www.jointogether.org/news/features/2008/long-fight-to-regulate.html).

Underage drinking in the country and certainly in Vermont is a large public health problem. The correct classification and taxation of these drinks could significantly help decrease underage drinking problems in the state in the following ways:

- 1. Increased taxation on these beverages will increase the price of these products making it harder for underage drinkers to be able to afford.
- 2. Correct classification will shift the availability of these products only to liquor stores and not corner gas stations and mom and pop stores.

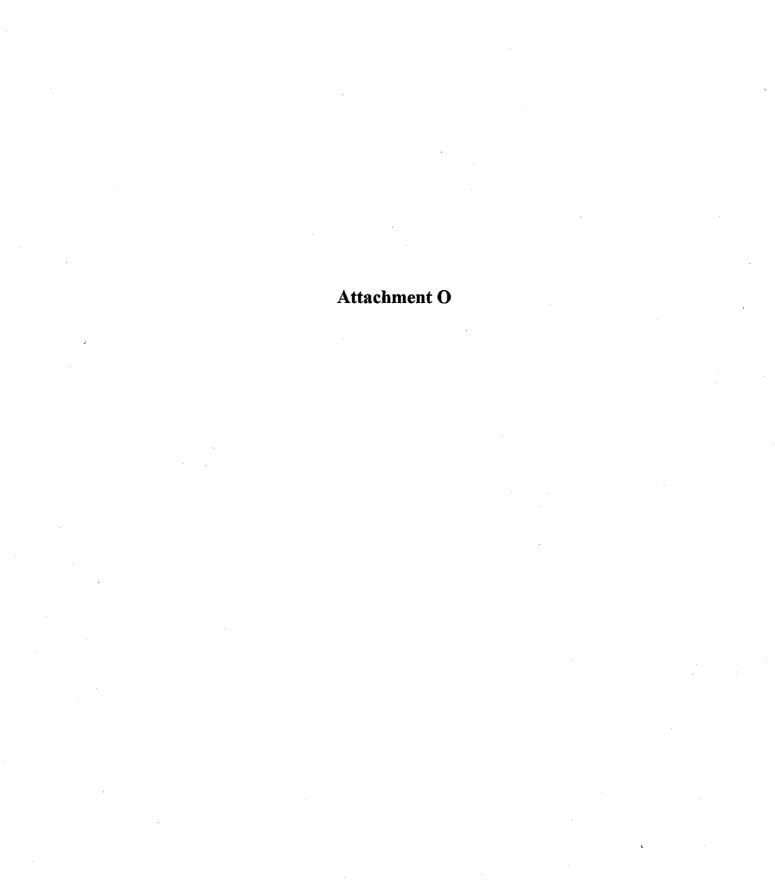
Increased taxation could also generate more tax revenue for the state at a time when revenue is greatly needed.

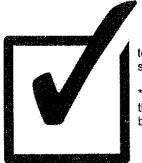
Vermont has over 25 substance abuse prevention coalitions with collectively hundreds of staff and perhaps thousands of volunteers who are funded by millions of taxpayer dollars. With your help in ensuring the correct classification and taxation of flavored malt beverages and alcoholic energy drinks, you can save thousands of man hours and tax dollars that would otherwise be needed to prevent underage use of these beverages. Most importantly you would ensure all Vermont underage youth and young adults have less access to alcoholic beverages which can be devastating to their futures.

Sincerely,

Ryan Simpson

Coordinator, Southshire Substance Abuse Coalition





The Hardwick Area Community Coalition Supports the Change:

to classify, tax, market, and sell malt-beverages containing any amount of distilled spirits as spirituous beverages!

*According to the OSSU School District YRBS 2007, malt beverages made up 27% of the alcohol consumed by females in grades 8-12, and 12% of the alcohol consumed by males.

Since a significant amount of the alcohol content in Flavored Malt-Beverages comes from distilled spirits, they should be taxed and be subject to limited availability as spirituous beverages. This is an important step for keeping youth safe in Craftsbury, Greensboro, Hardwick, Stannard, Walden, Wolcott and Woodbury because:

We are involved in	underage drinking in
our area and war	ld like to see a Johange
around malt bever	age,
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The Hardwi	ick Area Community Coalition
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I am interested in attending or speaking at a	public hearing regarding this issue:
NAME: Mike Baker	PHONE:
EMAIL:	town: Hardwick

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Cabot Coalition

P.O. Box 245 Cabot, VT 05647 802-563-3338 cabotclt@vtlink.net

October 21, 2008

Cabot Coalition Board of Directors:

Mr. Mike Hogan Commissioner Vermont Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05620

Jeanne Johnson, Chair Cia Considine, Co-Chair Susan Alexander Connie Hourihan Julia Kaptan Marion Morrison Regina Quinn William Walters

Lori august mad

Dear Commissioner Hogan:

The Cabot Coalition supports the re-classification, definition, marketing, sale and taxation of flavored malt beverage and alcohol energy drinks (Alco-pops).

Our volunteer work with the Cabot Coalition has made us keenly aware of the hazards that Alco-pops present to our young people.

According to the 2007 Youth Risk Behavior Survey results, nearly one-quarter (24%) of youth in Cabot who drank in the past 30 days report drinking malt beverages. This is the same percentage of youth who report drinking beer.

We know that successful prevention efforts include limiting the availability of alcohol, restricting advertising of alcoholic beverages and increasing the price.

If Alco-pops are listed as distilled spirits then we expect that fewer youth will use flavored malt beverage and alcohol energy drinks because:

- 1) These products will only be sold in liquor stores, versus local grocery stores, and limit availability to teens:
- 2) The distilled spirit industry still follows some self-mandated regulations, which could limit the advertising that reaches young people; and
- 3) Increased taxation on these products will increase the price, making it less likely that youth will purchase Alco-pops.

We appreciate the opportunity to share our thoughts with you and look forward to the re-classification, definition, marketing, sale and taxation of flavored malt beverage and alcohol energy drinks.

Most Sincerely,

The Cabot Coalition Board of Directors and Staff

cc: Senator Ann Cummings, Senator William Doyle & Senator Philip Scott



info@springfieldprevention.org phone: 802.885.8706 fax: 802.885.8708



www.springfieldprevention.org 56 Main St., Suite 208 Springfield, VT 05156

Friday, October 17, 2008

VT Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05620-4501

Dear Ms. Lawrence and Commissioner Hogan,

I am writing to thank you for your leadership in Vermont in and bringing attention and research to the issue of mis-classification of flavored "malt" beverages. As you are doing the research on this issue, I need not laden your plate with a letter convincing you of the importance of this. I would like to share, on behalf of the Springfield Prevention Coalition, a little about the impact that the re-classification of certain flavored malt beverages and alcohol energy drinks would have on our community.

We are advocating for the full re-classification of beverages containing any amount of distilled spirits, as was done in the state of California. This would result in a hugely positive impact on our community, because it would drastically reduce the availability of these alcoholic beverages for teens. This is particularly needed in Springfield because there is a significantly higher percentage of students in grades 8-12 reporting preference for flavored malt beverages than at the State level. There is strong evidence linking availability of alcohol to usage, and among products that are particularly geared at underage consumers this would have a huge impact.

I have taken the liberty to extend your request for public comment to our coalition members, and I hope you will take the time to look over their responses. I am confident that Vermont's substance abuse prevention coalitions would be able to mobilize many people in support of this change if it enters the House or Senate, and I hope you will call on us for support as this effort moves forward.

Thanks for your work and support,

Kathleen McNamara, Coordinator Springfield Prevention Coalition

ⁱ According to the Springfield School District YRBS 2007, malt beverages made up 35% of the alcohol consumed by females in grades 8-12, and 16% of the alcohol consumed by males. This is significantly higher than the state average of 29% and 11%, respectively. It is also significantly higher than the rate at which adults over age 21 consume malt beverages.



NAME:

EMA!L: ____

The Springfield Prevention Coalition Supports the Change:

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PHONE:

TOWN:



The Springfield Prevention Coalition Supports the Change:

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📓 I am interested in attending or speaking at a public hearing regarding this issue:

PHONE: 802-885-444

TOWN: Springfield



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EMAIL: Weeksnyt@yahoo.com town: Springfield

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✓ I am interested in attending or speaking at a public hearing regarding this issue ✓
NAME: Christing Jimmons PHONE: 802-885-7917
EMAIL: CISCASO 5 Dhotmail. Com TOWN: Springfield, VT
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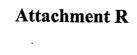
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P.O. Box 197 Ludlow, VT 05149 802-22TRUST (228-7878) brace7878@yahoo.com

October 28, 2008

Commissioner Michael J. Hogan c/o Marcia Lawrence, Executive Assistant Vermont Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05620-4501

RE: DLC Study on Classification of Flavored Malt Beverages & Alcohol Energy Drinks.

Dear Commissioner Michael J. Hogan

The Black River Area Community Coalition, a local substance abuse prevention coalition supports the reclassification of FMB's in our efforts to reduce underage drinking and binge drinking. This letter and the attached signatures are submitted in response to the Vermont DLC's request for public comment on these FMB's and alcohol energy drinks.

Girlie Drinks. Alco-Pops. Cheerleader Beers. Malternatives. Panty Droppers. Bitch Beers. From these slang names for what the alcohol industry and regulatory institutions call Flavored Malt-Beverages (FMB's), it's not hard to tell who the average consumer is. Although FMB's are the primary drink of choice for underage female drinkers, they rank last in the preferred beverage of women who are over 21, according to the American Medical Association's 2004 study.

On the heels of California's groundbreaking decision to re-classify so called "Girlie Drinks," and Alcohol Energy drinks as distilled spirits rather than beer, we urge the VT Department of Liquor Control to reclassify FMB's as distilled spirits, rather than beer. This would allow for changes that could significantly reduce underage drinking in Vermont for a number of reasons.

First, it would restrict availability by taking these products off the shelves of supermarkets and gas stations that are frequented by young people, and place them exclusively liquor stores. Store clerks and managers will no longer have to guess which drinks contain alcohol.

Secondly, it would subject flavored malt beverages to a higher tax rate, which would generate revenue and bump it out of the range of affordability for teens. This will not raise taxes on already burdened taxpayers. The population most affected by this change would be the young, underage drinkers of Vermont.

Finally, reclassification could also mean that we would see more responsible advertising of these products, as the Distilled Spirit Industry follows some self-mandated regulations that would keep these products in check. Currently ads for these products are blatantly targeted at underage drinkers, particularly young women.

It's no secret that the alcohol industry is using Flavored Malt-Beverages to attract younger drinkers. Alcopops are designed to bring in new drinkers and people who don't like the taste of beer and alcohol. A brand development manager for Boston Beer Company noted that, "With younger drinkers, their palates haven't quite matured yet to drinks like bourbon. Malternatives are a sweeter drink, they're easier to drink and it takes less time to mature to the taste." Despite claims that it is the young "of-age" drinkers who are targeted with these products and ads, a significant minority (41%) of flavored malt beverages are consumed by young people ages 21-27.

According to the Rutland Windsor Supervisory Union's Youth Risk Behavior Survey 2007 (our school district), malt beverages made up 31% of the alcohol consumed by females in grades 8-12. This is even higher than the state-wide average of 29%. It is also significantly higher than the rate at which adults over age 21 consume malt beverages.

Since a significant amount of the alcohol content in Flavored Malt-Beverages comes from distilled spirits, they should be taxed and be subject to limited availability as spirituous beverages. This is an important step towards keeping Ludlow, Plymouth and Mount Holly's youth safe and alcohol free.

We look forward to your speedy recommendation on this matter.

Sincerely,

Brigid **\$**ullivan

Executive Director

C: Senator Alice Nitka State Rep. Dennis Devereux

¹ Trish Rohrer, brand-development manager, Boston Beer Company, quoted in Restaurants USA, May 2002.

² Alcopops and Girls: Fact Sheet. American Medical Association, 2004.



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Flavored Malt-Beverages will no longer be sold in convenience stores. They will be sold in

VT Liquor Stores.

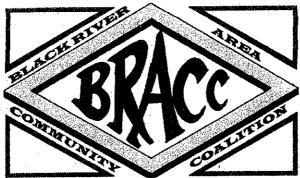
Store clerks and managers will not have to guess which drinks contain alcohol.

Alcopops are designed to bring in new drinkers and people who don't like the taste of beer and alcohol.

Advertising for Alcopops is particularly targeted to teenage girls.

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Signed Oct 28 +29 (mbs)



Community Coalition Supports the Change:

to classify, tax, market, and sell malt-beverages containing any amount of distilled spirits as spirituous beverages!

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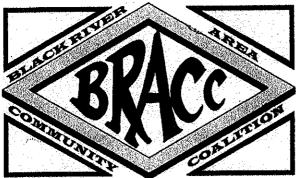
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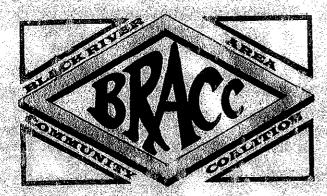
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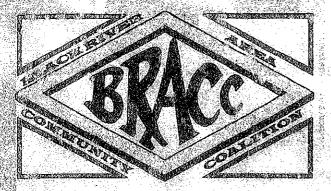
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VT Liquor Stores

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Alcopons are designed to bring in new drinkers and people who con't like the taste of over and alcohol.

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Mail to:

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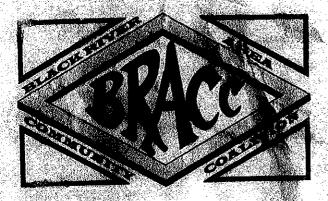
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Store clerks and managers will not have to guess which drinks contain alcohol.

Alcopoops are designed to bring in new drinkers and people who don't like the taste of beer and alcohol.

Advertising for Alcopops is particularly targeted to teenage girls.

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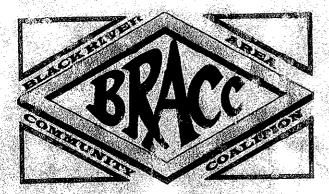
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Mail to:

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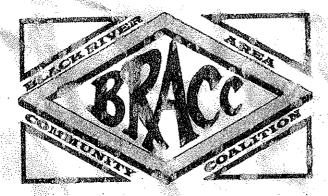
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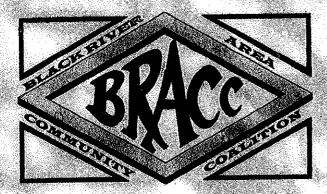
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Alcopops are designed to bring in new drinkers and people who don't like the taste of beer and alcohol.

Advertising for Alcopops is particularly targeted to teenage girls.

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Mail to:

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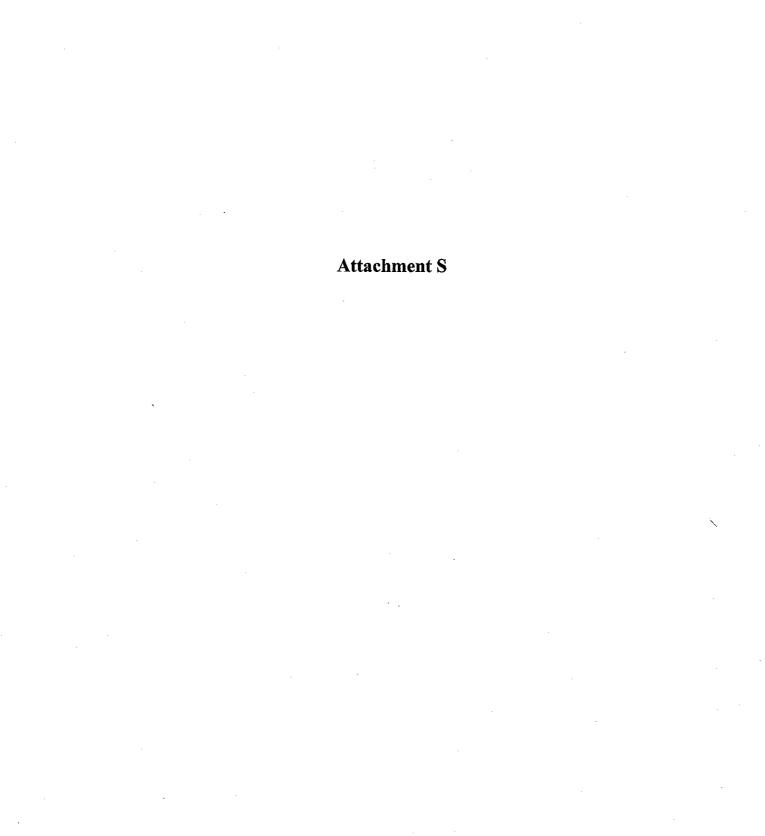
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Mail to:



THE FRANKLIN NORTHEAST SUPERVISORY UNION STRATEGIC PREVENTION FRAMEWORK

Bakersfield • Berkshire • Enosburg • Montgomery • Richford Putting the power of prevention in your hands

To Whom It May Concern:

I am writing to you today out of a sense of deep concern and a desire to create positive change in the community and state that I am proud to call my home. My request is that you please reclassify flavored malt beverages and alcohol energy drinks – more commonly referred to as alcopops – from malt beverages to spirits with regard to their sales, marketing, and taxation.

For the past four years I have made my home in Enosburg Falls, and for the past year I have served as the Franklin Northeast Supervisory Union's Strategic Prevention Framework State Incentive Grant (SPF-SIG) coordinator. In both my personal and professional life, I am acutely aware of the negative role the irresponsible use of alcohol plays in Franklin County, and this behavior is not restricted to those age 21 and older.

A simple early-morning walk through Lincoln Park in the center of our village yesterday morning yielded evidence that such irresponsible behavior is a constant presence. Like so many of our parks and other similar public areas around the state, Lincoln Park is the site of choice for certain groups of teens and young adults who pass their time with alcohol. The truly striking thing is the choice of alcohol this population chooses to wile away their time with. Scattered around Lincoln Park on this chilly October morning were a number of empties. Not beer cans or bottles, not cheap whine, and not discount booze — what I picked up were two Mike's Hard Lemonade bottles, two Sparks alcoholic energy drink cans, and one tall can of energy beer (I can't recall the brand). Along with these, there were three Rock Star energy drink cans, two Monster energy drink cans, and one Red Bull energy drink can. This isn't the first time a mess of this variety has been cleaned up in Lincoln Park.

We have come to a time and place where it is not unusual to see children as young as 8 or 9 chugging down a Red Bull or some other sort of non-alcoholic energy drink. Students drink them on the way to school, they drink them at school, and they drink them after school. Most of these energy drinks are identifiable in a generic sense: brightly colored, engagingly labeled, and shiny. What kid wouldn't want one? However, also available in disturbingly similar packaging — even with the exact same brand names in some cases — are the alcoholic energy drinks.

These drinks – the previously mentioned Sparks, along with Rock Star 21, Smirnoff Ice, Tilt, and many, many more – are marketed on Myspace and Facebook, social networking websites frequented largely by youths. They also tend to be placed next to or relatively close to their non-alcoholic counterparts in convenience stores. In fact, in convenience stores where clerks aren't devoting 100 percent of their attendance to the task at hand, underage customers can get away with slipping a couple or three cans of alcoholic energy drinks into a batch of non-alcoholic ones, and the clerk is never the wiser.

"Well, the clerk obviously just isn't doing his or her job very well," one thinks. On the contrary, short of giving each can a close inspection, it is hard for many people to tell the difference between the non-alcoholic and alcoholic energy drinks. Monster, Rock Star Hazelnut, Rock Star 21, NOS, Sparks, Jolt, Hype, Spykes, Cocaine, Arizona Kahlua Cappuccino Shake—which is which? I won't go through them all now, but I will point out that Spykes is alcoholic, and so is Rock Star 21. Rock Star Hazelnut isn't, though, and neither is Cocaine. And the Arizona Kahlua Cappuccino Shake—the one with an actual alcohol brand name on it? That one isn't alcoholic either. Confused yet? So are most parents, not to mention the poor store clerks. But the kids know this stuff inside and out.

As I mentioned earlier, the more colloquial name for these flavored malt beverages is alcopops. That's because of this simple equation: alcohol + sweet like soda pop = alcopop. Here are three more particularly telling names for these drinks: sissy drinks, girly drinks, panty droppers. This is because the users of alcopops know through experience what the data bears out: teenage girls are more likely to drink these sorts of beverages than their male counterparts (American Medical Association, Alcopops & Girls: Fact Sheet, www.alcoholpolicymd.com/pdf/alcopops_factsheet-4.pdf). Further, the 2007 Youth Risk Behavior Survey for Franklin County indicates that among students who drank in the past 30 days, 14 percent of males said they drank malt beverages, while 35 percent of females did the same.

The consideration now being given to reclassifying flavored malt beverages as spirits with regard to their sales, marketing, and taxation has come at an advantageous time. Right now there are community-based coalitions working in the field of underage drinking prevention throughout the Green Mountain State. Some are doing their work through the SPF-SIG, as I am. Others are working through different grants, or even dedicating personal volunteer time. Our goals are the same: helping youth to make healthy choices and remain alcohol-free. I can only speak with certainty for myself, but I suspect that my counterparts around the state will join me in saying that we are ready and willing resources for making this reclassification happen. This action should be a given. After all, flavored malt beverages are spirits. You know the saying: if it walks like a duck and talks like a duck, it's a duck. Well, if it's made like a spirit and works like a spirit, it's a spirit. And spirits don't belong on the shelf at the local grocery store or gas station. The State of Vermont has a responsibility to its citizens – for their own safety and well-being – to put these beverages where they belong: in the local liquor store.

Ethan Dezotelle • edezotelle@fnesu.net • (802) 933-5058 • P.O. Box 73, Enosburg Falls, VT 05450

THE FRANKLIN NORTHEAST SUPERVISORY UNION STRATEGIC PREVENTION FRAMEWORK

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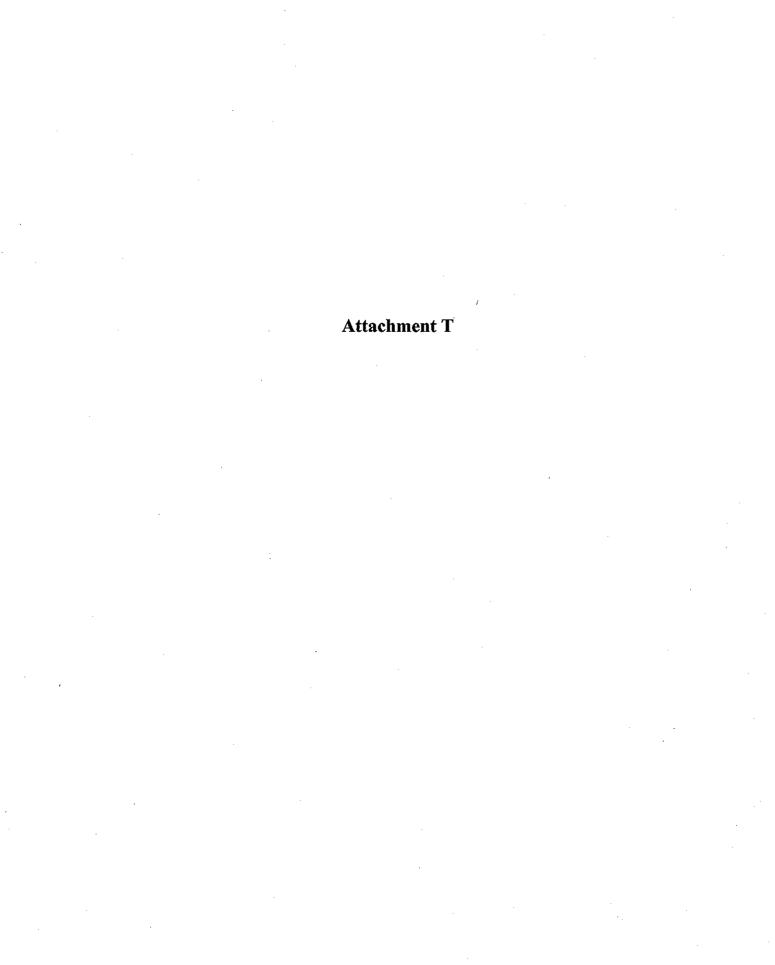
I've certainly gone on long enough about this, and I thank you for your time. I will close with one last request. Please hold public hearings on this topic. There are parents, students, and community members, as well as professionals, who are seeing the negative impact these flavored malt beverages are having on those around us. They would relish the opportunity to speak face-to-face with you and our elected representatives. So would I.

Please don't hesitate to contact me with any questions or concerns.

Best,

Ethan Dezotelle

FNESU SPF-SIG Coordinator



Marcia Lawrence
VT Department of Liquor Control
13 Green Mountain Drive
Montpelier, VT 05620-4501

October 23, 2008

Dear Ms. Lawrence;

I am writing on behalf of the Greater Falls Prevention Coalition in Bellows Falls, VT. We are deeply concerned with the issue of Energy Drinks and Alco-pops, and their current misclassification. We urge you to consider the importance of reclassifying these appropriately so that we can reduce the frequency and occurrence of underage drinking. Attached here are two articles that I urge you to read — one was written by me, to our local paper, and the other is out of California, a leader in raising awareness to this issue.

It is clear that these types of beverages are designed to attract youth, both in their youthful marketing strategies, and the flavors that they use, making them taste more like "candy" than like an alcoholic beverage. This is what gets kids "hooked" on alcohol at a young age. The labels are misleading and unclear, creating confusing among kids, parents, store clerks, and school administrators.

Did you know that a lot of kids are drinking these in schools and are going unnoticed? I was a personal witness to this when working at the Bellows Falls Middle School as a Student Assistance Professional for two years. Yes, Middle School -7^{th} graders walking around with alcohol and drinking it all day at school, without anyone catching on. Why would we want to continue to encourage this?

Why should we allow a multimillion dollar industry to get away with such blatantly unethical practices? Why can't we simply label these properly, reduce their accessibility to kids, and rest our minds knowing that we "did the right thing?" These are questions that I would like to see addressed at the next legislative session.

Thank you for your time and consideration of this matter. We need your voice.

Sincerely,

Kari Fletcher

Coordinator, Greater Falls Prevention Coalition 12 Church Street

Bellows Falls, VT 05101

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802-460-0359

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Energy drinks with alcohol attract teens

Slick marketing conceals product contents By Sophia Fischer sfischer@theacorn.com



BOOZE OR NO BOOZE?--The popular energy drinks appear similar in packaging, but the Rockstar 21, Sparks and Tilt brands each contain alcohol. Read all labels carefully, officials warn. That energy drink your teen is so fond of may contain a potent mix of alcohol and caffeine. Using names such as Tilt, Rockstar 21, Liquid Core, Sparks and Joose, the colorful cans sold in grocery, convenience and liquor stores are marketed to children and young adults.

Although it is illegal for minors to purchase the drinks, cashiers are sometimes confused because the alcoholic and nonalcoholic packaging is so similar and the labels are hard to read, according to Chris Albrecht, district

administrator for the California Alcohol Beverage Control office in Ventura County. It is a growing problem and a law enforcement challenge, said Albrecht, who does not consider any drink containing alcohol to be an "energy drink."

"Everyone has to understand that drinking one of these products is virtually the same as drinking a beer product," Albrecht said. "It can have a dangerous impact on driving or any other activity."

According to California law, any drink with more than one-half of 1 percent of alcohol is considered alcoholic. A standard beer contains 3 to 5 percent alcohol.

Energy drinks contain various levels of alcohol, and Joose is one of the more potent brands. At 23½ ounces and 9.9 percent alcohol, a single can of Joose is the equivalent of three beers and eight cups of coffee, said Dan Hicks, program administrator for Straight Up Ventura County, a nonprofit organization that promotes social change regarding underage drinking among 15- to 25-year-olds. The other brands contain 6 to 7 percent alcohol.

"Manufacturers are conveniently blurring the line of what's alcoholic and what's not," Hicks said. "Go to the sparks.com website to get a clear idea of who they're targeting."

Teens like the drinks because the caffeine helps reduce the sluggish effects of the alcohol. But the combination of stimulant and lethargy can be lethal, said Hicks.

"That 'speedball'--going up and down at the same time--is what John Belushi died of," said Hicks, referring to the comedian who died in 1982 from an injected lethal combination of heroin and cocaine. "It's a whole new ballgame in the teen party scene."

There are about a dozen different alcoholic energy products that would not be detected by a parent or school administrator as such, according to Hicks. A recent walk by administrators

through a San Diego high school during lunch revealed nine students drinking alcoholic energy drinks, he said.

"These kids were openly getting a buzz on campus," Hicks said. "We have a significantly higher number of young people drinking on campuses in Ventura County. Are energy drinks containing alcohol contributing to these statistics? We are researching that."

An ABC investigator recently arrested a store cashier for selling three cans of Sparks, an alcoholic malt beverage, to a minor. The clerk denied knowing it contained alcohol. Sparks energy drinks come in alcoholic and nonalcoholic versions.

"Every product that goes into the store, the cashier should be trained on," Albrecht said

It is up to retailers to educate their workers to know the differences between the drinks, Hicks said. Stores are required to separate the alcoholic versions from the nonalcoholic versions. Some stores, like Ralphs and Vons supermarkets in Agoura Hills, use their checkout systems to help, according to store managers.

"The scanner alerts the cashier that this is an alcoholic beverage and the cashier asks for ID," said Vons' manager Napoleon Salguero.

But it's a "mixed bag" when it comes to clerks being educated and alert to the potential problem.

"Older retailers and managers do know the difference, but younger ones don't always," Hicks said.

There have been efforts by the state Legislature to require manufacturers to improve labeling.

"Frankly, many store owners and clerks are not even aware that these 'alcopops' contain high levels of alcohol, so they are easily obtained by children and teens," said Diana Traficante, an Oak Park parent. "This is a serious matter. Think about your child knowingly or unknowingly purchasing one of these energy drinks and the effect it can have on his or her daily activities."

For more information or to report sales of alcohol to minors, call the Alcohol Beverage Control office at (805) 289-0100.

What's the Scoop on Energy Drinks?



If you are not between the ages of 10 and 25, you may not even be aware of how popular the Energy Drink craze has become. You also may not be aware that many of these popular Energy Drinks now contain alcohol, and are being marketed directly to youth. Both the alcoholic and the non-alcoholic versions likely pose serious risks to the health and well being of young people.

Let's start with the caffeine:

The average soda contains 25-40 milligrams of caffeine, a brewed cup of coffee contains 85- 135 milligrams, while the most popular energy drinks contain anywhere from 100- 1200 milligrams per drink. Some youth boast drinking 3-4 energy drinks daily.

The potential health risks of consuming these quantities of caffeine include insomnia, increased heart rates, higher blood pressure, seizures, substantial weight gain, calcium loss leading to weakened bone development, and severe dehydration, to name a few. In March this year the *Journal of American College Health* published a study linking high energy drink consumption in young adults to risky behavior, including unprotected sex, substance abuse and violence.

Ellenka Wasung-lott, Program Director of the Boys & Girls Club in Bellows Falls, made the decision to ban all Energy Drinks from the Club, when members would come in bragging about how many they drank and how "hyper and wild" they felt. Wasung-lott claims that "Some members also started a trend in wearing the tabs from the Energy Drink cans around their necks as a source of bragging about how many they have consumed."

Then there are the alcoholic Energy Drinks, which are nearly indistinguishable from those that do not contain alcohol. They are packaged to look almost the same as the non-alcoholic versions, and are being marketed to youth on social networking sites such as Myspace and Facebook. Some companies are developing ringtones, instant messages, and other ways to reach youth and develop relationships with them, while toting their products. Many store clerks across the country have made the mistake of selling these products to minors because they assumed they were the non-alcoholic versions. Most school staff and parents also do not recognize the difference between the alcoholic and non-alcoholic Energy Drinks, and therefore many youth have found it easy to publicly drink the alcoholic Energy Drinks without anyone raising an eyebrow.

The additional health concerns of the alcohol and caffeine combination:

The combination of the stimulant in the caffeine and the depressant in the alcohol create a potentially lethal combination. The products are being marketed to young people as a great way to stay up all night getting drunk, while never passing out or getting tired. This tactic may fool the body into feeling like it can take in more alcohol than it can truly handle, and may also lead to higher rates of drinking and driving and other risky behaviors.

What can we do about these issues?

Parents need to read labels and monitor what their children are consuming. They need to have discussions with their children about the health dangers and potential consequences of these Energy Drinks. They should educate their children about the media and how corporations are unethically marketing these products to youth.

Educators and School Administrators need to consider policies about whether or not to allow these products in their schools. Dan Hicks, a program administrator for the nonprofit organization, Straight Up Ventura County, shared the following, "A recent walk by administrators through a San Diego high school during lunch revealed nine students drinking alcoholic Energy Drinks." All school staff and administrators should know how to distinguish between the types of Energy Drinks, especially if they are going to allow them on school grounds.

Retail store owners need to ensure that their clerks are well trained in how to distinguish between the alcoholic and non-alcoholic versions of the Energy Drinks. They can also place the alcoholic versions in a different section, away from those that do not contain alcohol.

We all can react to this by recognizing the health dangers, and making better choices. We don't have to walt around for 20 more years of research and tragic consequences before we make up our own minds about what is good for us.

Written by Kari Fletcher, Coordinator, Greater Falls Prevention Coalition. The mission of the Greater Falls Prevention Coalition is to promote fun, productive, safe and healthy lifestyles for youth and adults. We will develop and implement a comprehensive community-wide prevention effort that reduces alcohol, tobacco, and other drug abuse in Windham Northeast.

Kari Fletcher was the Student Assistance Professional at the Bellows Falls Middle School for two years, and before that spent four years working with youth and providing prevention programs at the Boys & Girls Club of Brattleboro.

To contact the Greater Falls Prevention Coalition, please call: 802-460-0359, or send us an email at: gfpc00@gmail.com.

For more information, or to contact the Greater Falls Prevention Coalition, please call: 802-460-0359.





October 30, 2008

Commissioner Hogan Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05620-4501

Dear Commissioner Hogan,

On behalf of myself, my staff and the members of the Brattleboro Area Prevention Coalition, I am requesting that legislative changes be made to the regulations that govern flavored malt beverages. Malt-based beverages containing flavored distilled spirits and caffeine such as alcohol energy drinks and alco-pops should be sold, taxed and marketed as distilled spirits and not malt beverages.

We are concern for our youth and young adults who are the majority consumers of these beverages. The unfair and deceptive marketing practices of the liquor industry target this population already. Vermont needs to enact changes to our regulations to identify these products for what they truly are-flavored distilled spirits and to sell, tax and market these product accordingly.

The Brattleboro Area Prevention Coalition and the community are engaged in multiple environmental strategies to reduce underage drinking as are many community Coalitions throughout Vermont. As we move forward with our plan, we will educate our community about alcohol energy drinks, energy drinks in general and the marketing of these products to youth and the consumption by youth.

Thank you in advance for your attention.

Sincerely,

Beth M. Shrader, Director Brattleboro Area Prevention Coalition

Attachment V



October 29, 2008

Commissioner Michael J. Hogan Vermont Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05620-4501

RE: DLC Study on Classification of Flavored Malt Beverages & Alcohol Energy Drinks.

Dear Commissioner Michael J. Hogan:

I am the coordinator for the Burlington Partnership for a Healthy Community, a substance abuse prevention coalition that focuses on addressing the causes and consequences of substance use and abuse in the Burlington community. This letter is submitted in response to the Vermont Department of Liquor Control's request for public comment on Flavored Malt Beverages and alcoholic energy drinks.

I strongly support reclassifying and taxing Flavored Malt Beverages ("Alcopops") and alcoholic energy drinks as "distilled spirits" rather than beer. I know that you have already heard from a number of other coalitions throughout our state and the Department of Health with various facts about the positive effect this change would have on accessibility to underage drinkers and high risk behaviors frequently associated with consumption of alcohol.

I will not repeat the same information but would just say that I support the information and letter written by the Department of Health. I would also include that from a purely logistical standpoint the US. <u>Alcohol and Tobacco Tax and Trade Bureau</u> (TTB) says it best:

"Flavored malt beverages are brewery products that differ from traditional malt beverages such as beer, ale, lager, porter, stout, or malt liquor in several respects. Flavored malt beverages exhibit little or no traditional beer or malt beverage character. Their flavor is derived primarily from added flavors rather than from malt and other materials used in fermentation. At the same time, flavored malt beverages are marketed in traditional beer-type bottles and cans and distributed to the alcohol beverage market through beer and malt beverage wholesalers, and their alcohol content is similar to other malt beverages in the 4-6% alcohol by volume range.

Although flavored malt beverages are produced at breweries, their method of production differs significantly from the production of other malt beverages and



beer. In producing flavored malt beverages, brewers brew a fermented base of beer from malt and other brewing materials. Brewers then treat this base using a variety of processes in order to remove malt beverage character from the base. For example, they remove the color, bitterness, and taste generally associated with beer, ale, porter, stout, and other malt beverages. This leaves a base product to which brewers add various flavors, which typically contain distilled spirits, to achieve the desired taste profile and alcohol level.

While the alcohol content of flavored malt beverages is similar to that of most traditional malt beverages, the alcohol in many of them is derived primarily from the distilled spirits component of the added flavors rather than from fermentation." (70 Fed. Reg. 194 et seq. (<u>January 3, 2005</u>).)

To sum up, these projects are not beer; they are distilled spirits and should be classified and taxed as such and subject to limited availability as other spirituous beverages.

Reclassification could also mean that we should see more responsible advertising of these products. For instance, the Distilled Spirit Industry has to follow self-mandated regulations that could help to keep advertizing for these products targeted towards drinkers of legal age. Currently ads for these products are blatantly targeted at underage drinkers, particularly young women.

As I am sure you have heard before, it is no secret that the alcohol industry is using Flavored Malt-Beverages to attract younger drinkers. "Alcopops" are designed to bring in new drinkers and people who do not like the taste of beer and alcohol. A brand development manager for Boston Beer Company noted that, "With younger drinkers, their palates haven't quite matured yet to drinks like bourbon. Malternatives are a sweeter drink, they're easier to drink and it takes less time to mature to the taste." Despite claims that it is the young "of-age" drinkers who are targeted with these products and ads, a study by the Marin Institute in California found that 47% of all Alcopops are consumed by underage drinkers (www.marininstitute.org/alcopops).

The toll of underage drinking on this state and our town of Burlington is high. Underage drinking is a causal factor in a host of serious problems, including homicide, suicide, traumatic injury, drowning, burns, violent and property crime, high risk sex, fetal alcohol syndrome, alcohol poisoning, the need for treatment for alcohol abuse and dependence and others. According to data collected by the Pacific Institute for Research and Evaluation (PIRE) in 2006 through the direction of the Vermont Department of

¹ Trish Rohrer, brand-development manager, Boston Beer Company, quoted in Restaurants USA, May 2002.



FOR A HEALTHY COMMUNITY
Health, "Underage drinking cost the citizens of Vermont \$200 million in 2005. These costs include medical care, work loss, and pain and suffering associated with the multiple problems resulting from the use of alcohol by youth...Vermont ranks 4th highest among the 50 states for the cost per youth of underage drinking. Excluding pain and suffering from these costs, the direct costs of underage drinking incurred through medical care and loss of work costs Vermont \$78 million each year."

The reclassification of these products and the subsequent positive effect on accessibility to underage drinkers is a blatant fact that we can not ignore. I look forward to your speedy recommendation on this matter. Feel free to contact me at (802) 324-3867 or mariahbphc@gmail.com with any questions.

Sincerely,

· Mariah Sanderson

Coalition Coordinator

Burlington Partnership for a Healthy Community

Manah J. Sanderso



Burlington High School GUIDANCE DEPARTMENT PATTY WESLEY, DIRECTOR/COUNSELOR

AMY MELLENCAMP, PRINCIPAL

52 Institute Road Burlington, Vermont 05408 TEL: (802) 864-8581 - FAX (802) 864-8408 YVETTE AMBLO-BOSE, COUNSELOR SEAN PADDEN, COUNSELOR LARISSA URBAN, COUNSELOR ERIN DUFAULT, COUNSELOR

October 30, 2008

Commissioner Michael J. Hogan Vermont Department of Liquor Control 13 Green Mountain Drive Montpelier, VT 05620-4501

RE: DLC Study on Classification of Flavored Malt Beverages & Alcohol Energy Drinks.

Dear Commissioner Michael J. Hogan:

I am the Prevention Coordinator at Burlington High School, as part of my duties as prevention coordinator I work to raise awareness in the Burlington High School community about substance abuse. This letter is submitted in response to the Vermont Department of Liquor Control's request for public comment on Flavored Malt Beverages and alcoholic energy drinks.

I strongly support reclassifying and taxing Flavored Malt Beverages ("Alcopops") and alcoholic energy drinks as "distilled spirits" rather than beer. I know that you have already heard from a number of other coalitions throughout our state and the Department of Health with various facts about the positive effect this change would have on accessibility to underage drinkers and high risk behaviors frequently associated with consumption of alcohol.

I will not repeat the same information but would just say that I support the information and letter written by the Department of Health. I would also include that from a purely logistical standpoint the US. Alcohol and Tobacco Tax and Trade Bureau (TTB) says it best:

"Flavored malt beverages are brewery products that differ from traditional malt beverages such as beer, ale, lager, porter, stout, or malt liquor in several respects. Flavored malt beverages exhibit little or no traditional beer or malt beverage character. Their flavor is derived primarily from added flavors rather than from malt and other materials used in fermentation. At the same time, flavored malt beverages are marketed in traditional beer-type bottles and cans and distributed to

the alcohol beverage market through beer and malt beverage wholesalers, and their alcohol content is similar to other malt beverages in the 4-6% alcohol by volume range.

Although flavored malt beverages are produced at breweries, their method of production differs significantly from the production of other malt beverages and beer. In producing flavored malt beverages, brewers brew a fermented base of beer from malt and other brewing materials. Brewers then treat this base using a variety of processes in order to remove malt beverage character from the base. For example, they remove the color, bitterness, and taste generally associated with beer, ale, porter, stout, and other malt beverages. This leaves a base product to which brewers add various flavors, which typically contain distilled spirits, to achieve the desired taste profile and alcohol level.

While the alcohol content of flavored malt beverages is similar to that of most traditional malt beverages, the alcohol in many of them is derived primarily from the distilled spirits component of the added flavors rather than from fermentation." (70 Fed. Reg. 194 et seq. (<u>January 3</u>, <u>2005</u>).)

To sum up, these projects are not beer; they are distilled spirits and should be classified and taxed as such and subject to limited availability as other spirituous beverages.

Reclassification could also mean that we should see more responsible advertising of these products. For instance, the Distilled Spirit Industry has to follow self-mandated regulations that could help to keep advertising for these products targeted towards drinkers of legal age. Currently ads for these products are blatantly targeted at underage drinkers, particularly young women. As someone who works to promote healthy and legal lifestyle choices for teens in my community I would be overjoyed to see such a change in how these products are marketed.

The toll of underage drinking on this state and our town of Burlington is high. Underage drinking is a causal factor in a host of serious problems, including homicide, suicide, traumatic injury, drowning, burns, violent and property crime, high risk sex, fetal alcohol syndrome, alcohol poisoning, the need for treatment for alcohol abuse and dependence and others. More immediately, underage drinking was recently involved in a fatal car crash involving a number of Chittenden County youth- any steps that can be taken to avert a similar tragedy should be enacted swiftly.

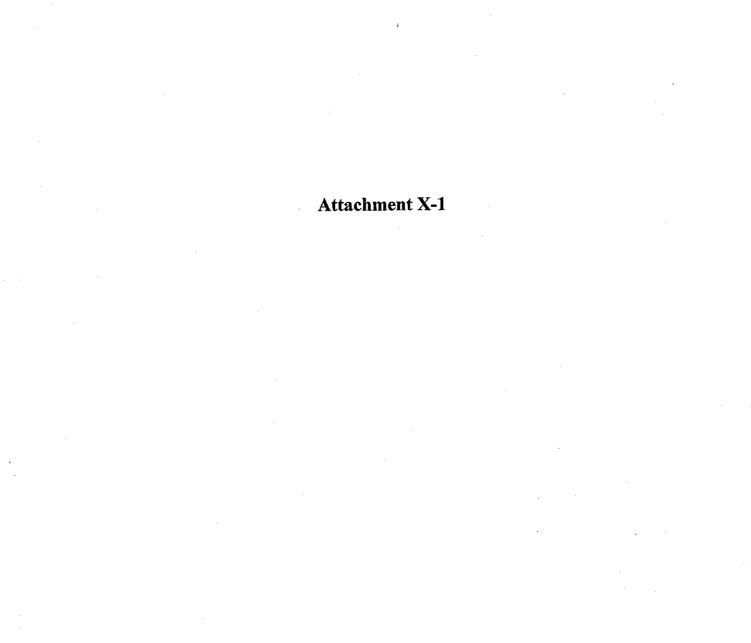
The reclassification of these products and the subsequent positive effect on accessibility to underage drinkers is a blatant fact that we can not ignore. I look forward to your speedy recommendation on this matter. Feel free to contact me at (802) 864-2148 or dspauldi@bsdvt.org with any questions.

Sincerely,

David Sy

Danielle Spaulding Prevention Coordinator

Burlington High School



To the DLC-THANK YOU! Thank you for doing this study on Flavored Malt Beverages ? Alcohol Energy drinks to reclassify those containing liguor as "distilled spirits." I also think that Alcohol Energy Drinks should have restricted access - or @ least better labeling about the effects - because I suffered from a very bad experience with them When I was in College. Not having tried a "Red Bull & Voolka" or "Sparks" or "Liquid Change before, I didn't know the effect it would have on my body, my actions or my mind. I went doort my Friday highet at normal, although having consumed a high date of Caltine + cilcoho ()
of my night quickly spiraled out of control. I'd started off the evening fired & thought the caffine in my bev. would thelp me strengentale a hove fun. O but it ended up keeping me up & drinking long after I should have gone to ped. My body was tired but I was wired by friends. When my pody began to spasm they decided it would be a good idea to bring me to the haspital to be monitored. I made it through the night okay, but with out my friends It my side I would have

been sactificed to fate - completely

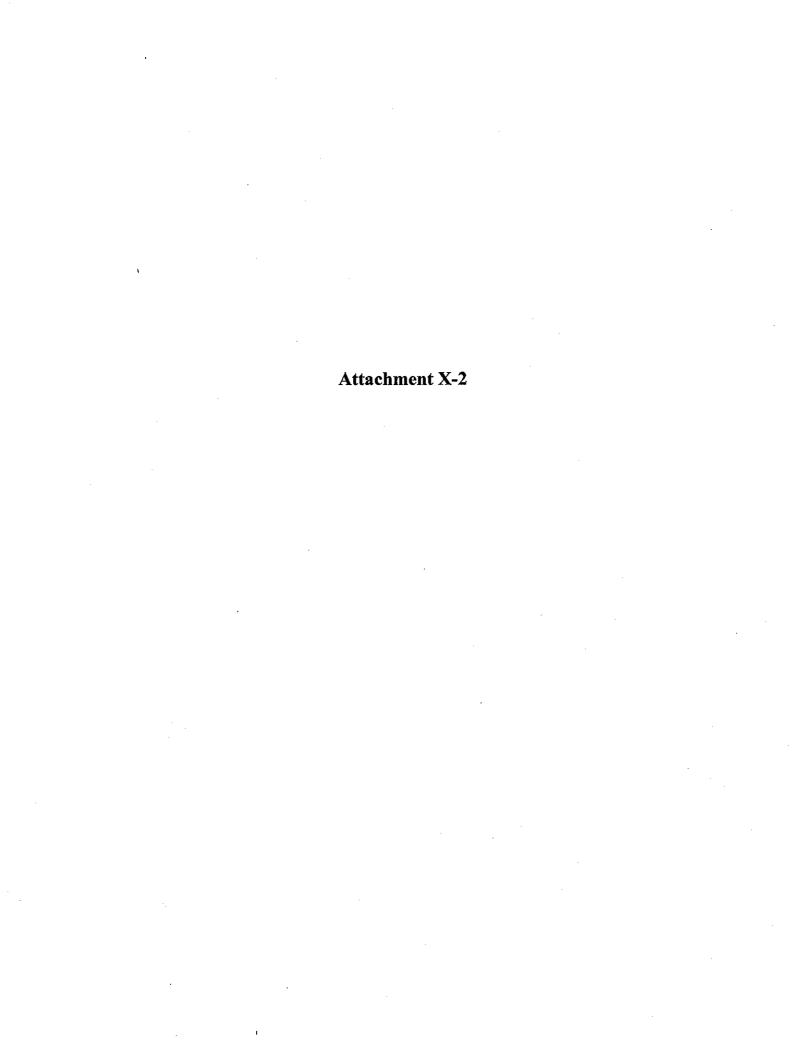
of my body & my surroundings. I was 22 years

I had a previous experience lifthat also involved young women consuming high levels of dechal in beknowned to them. I was a Resident Assistant in College for 30 freshman women. I awake one night to girl sprawled across the floor w/her head resting on the toilet seat, vomit running down her chest. She'd been at a party. Where "Jungle Juice" was being served. (a mix of poinch & Ever Clear). Ushe is one of hundreds of girls who get sick @ our school svery year from deadly mixes like this Where frat boys mix up a dose that tastes harmless (much like Flavored Matt Beks) but it packs a myan punch. (no pun intended). But legally mixed, packaged, & sold "fruity" drinks are no better in my eyes than this Jungle Juice. The Alcohol industry is playing the role of horny frot boy, intext cating our young women i hooking them on their of the power to change things to

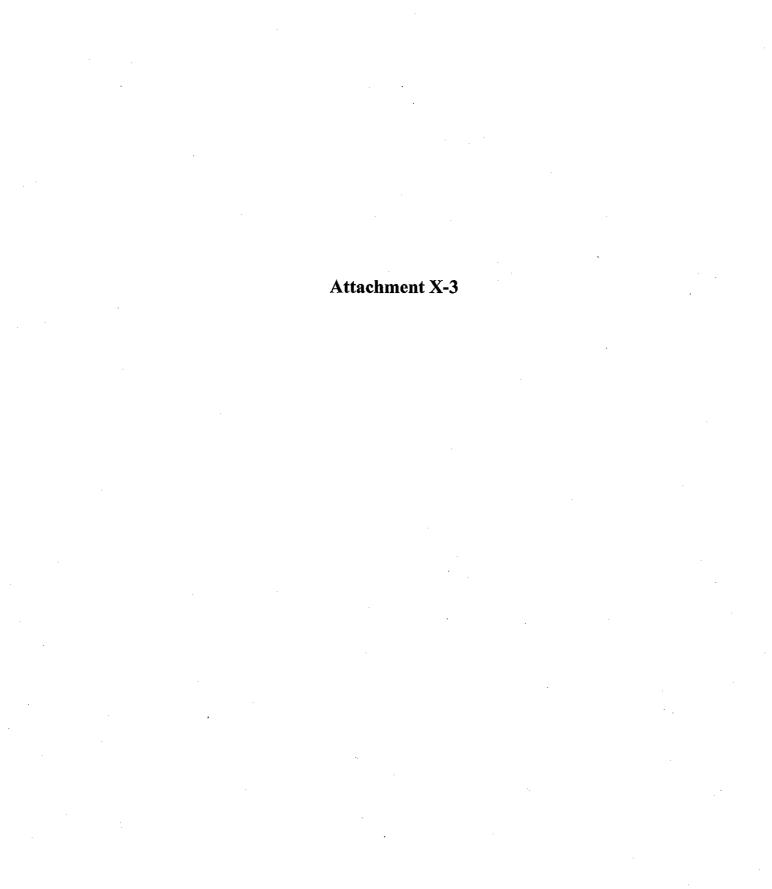
YOU have the power to change things for VT. WE have the power to change things for VT.
The Legislature owes Vermonters this service, this

protection against the industry.

Thank 400. 802-299-7765 VT Resident, age 24: 8 Walnut St. Springfield, VT 05/56



As a member of Vermont's Recovering community ? an concernal about the proliberation at so called FMB's. The lack of labelies puts me at significant vide de consumy at color by Juistale - with ch could well lead to relapse - This is not acceptable - Rf-alcohol Its not lasted CLBARLY it puts berunts Recovering County for rest Wale True



Lawrence, Marcia

From:

karen cribari [karen.cribari@youthservicesinc.org]

Sent:

Wednesday, October 29, 2008 12:01 PM

To:

Lawrence, Marcia

Subject: request for public comment

Marcia Lawrence VT Dept. of Liquor Control 13 Green Mountain Drive Montpelier, VT 05620

Dear Marcia,

AND MANY STATE OF THE STATE OF I am writing today as a resident of Vermont, a parent and a youth worker. I am very much in favor of any study with an eye towards defining the best practices for the distribution, sales and marketing of malt beverages in the State of Vermont, up to and including legislative changes to the regulations governing flavored mait beverages. I understand that the taxation of these products is also being determined, but that is of lesser concern to me. Of prime concern is the fact that the alcohol industry seems to have cleverly created products containing a significant percentage of distilled spirits that can at this time be legally sold outside the state controlled liquor outlets.

My work brings me up close to the reality of juvenile substance abuse. Limiting the availability of alcohol products will go a long way to help prevent this situation from worsening. The new malt beverages seem to be developed and promoted to appeal to a young population. The packaging of the beverages is ambiguous enough that underage youth can easily purchase (or steal) and carry them without detection, even in school! The convenience stores, gas stations and other small markets that tend to carry these beverages often experience high staff turnover, and there are difficulties training new hires on all the products before a clerk has to deal with a stream of people in a hurry. So, in my opinion, the proper classification of the new malt beverages is very important.

Thank you for your consideration.

Karen Cribari Juvenile Restorative Panel Coordinator 802-257-0361 ext 242 Youth Services: Healthy, Empowered, Valued

Attachment X-4

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From: Marilee Attley [Marilee Attley@wsesu.org]
Sent: Wednesday, September 24, 2008 3:29 PM
To: Lawrence, Marcia
Subject: Re: Energy drink classification
It's fine with me if you use my name.
Marilee Attley
"Lawrence, Marcia" <Marcia.Lawrence@state.vt.us> on Wednesday, September 24,
2008 at 3:25 PM -0500 wrote:
>Dear Ms. Attley,
>Thank you for your comments. I will make sure they are included in our
>study. May I include your name, or would you prefer that I don't?
>Sincerely,
>Marcia
>--
>Marcia Lawrence, MSA
>Marketing/Customer Service Supervisor
>Vermont Department of Liquor Control
>13 Green Mountain Drive, Drawer 20
>Montpelier, Vermont 05620-4501
> (802)828-4932
>Marcia.Lawrence@state.vt.us
>----Original Message----
>From: Marilee Attley [mailto:Marilee Attley@wsesu.org]
>Sent: Wednesday, September 24, 2008 3:22 PM
>To: Lawrence, Marcia
>Subject: Energy drink classification
>Dear Ms. Lawrence,
>I am writing to urge you to please do all you can to see that energy
>drinks containing alcohol are classified under distilled spirits and
>sold through liquor store. The ready availability of these drinks to
>underage consumers seems to me to be a real problem and must be remedied.
>Many thanks for your help with this issue.
>Sincerely,
>Marilee Attley
>208 Peaked Mountain Road
>Townshend VT 05353
>802-451-3471 (Days)
>802-365-4531
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Attachment X-5

Dear Marcia Lawrence,

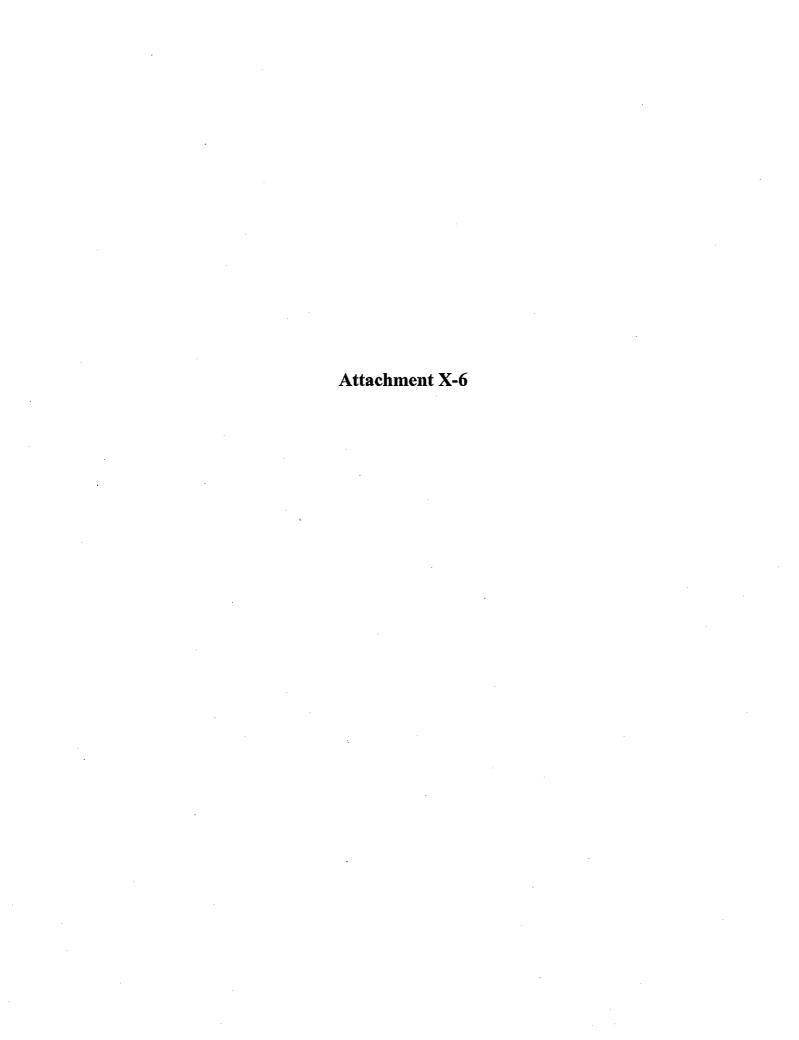
I am writing to you because of my concern of the Alcohol Energy Drinks being available at my local convience and govern stores, I am a mother of three and my oldest son has Down syndrome. They are all drawn to thise colorful cans and I do not feel they should be so readily available.

Labeling these products as distilled spirits is the right thing to do because that is what they are. I'm very concerned because my children can pick them up so easily. I would be happy to be a volunteer, as a resource to help get this be happy to be a volunteer, as a resource to help get this bill introduced & passed.

Maybe we could have public hearings on this topic. Vermont is working hard on underage drinking and this is a perfect example of an environmental strategy that can be effective, I appreciate your time talkention with this important

Matter. Sincerely,

Robin White
72 Wetstone Rd.
Mallboro VT 0530)



October 10, 2008 marcia Laurence assistant, Vernont Dept & Legier Control 13 breen nountain Bribe Montpelier, VT 05620-4501 Dear Marcia, I am appauled at the number of new alcohic products available to youth in our county in SG Vernant. There Hererages and energy drunks and alsoholpops are a serious problem because they are not labeled dorrectly. Some labeled as malt benerager should be labeled as distilled, etc. Please help to rectify This pituation as the musbaliling, makes these alcoholic products saleable to speath and Josts the pellers in an infortunate, untenable pasition. most succeely, Slysor Vellais. Executive Director youth Sencer

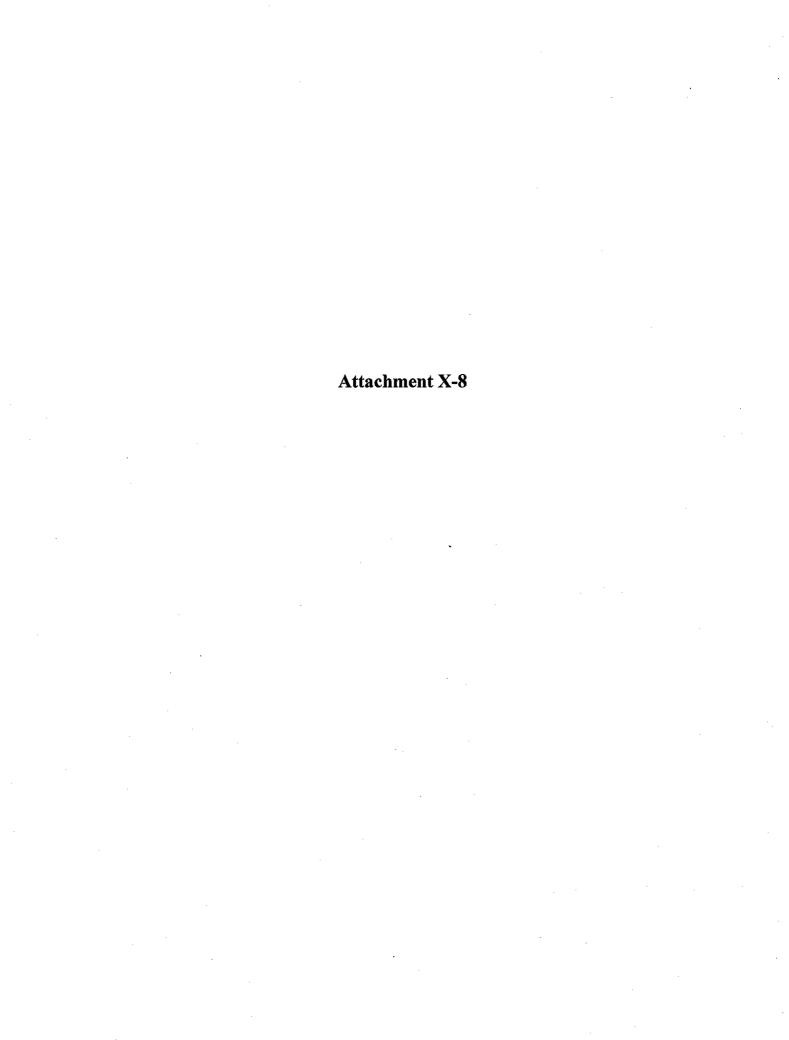
Attachment X-7

Dear Ms. Lawrence,

I am working to express my support of changes to the regulations governing flavored malt beverages.

As a mother of two small children and an employee of a substance use prevention coalition in Vermont, I feel strongly that these products need to be labeled appropriately in order to be labeled appropriately in order to keep them out of the hands of youth under 21.

The alcohol industry is a sphishrated machine that markets alcohol products directly to kids. The least we can do is make sure that they have to openly disclosed and labeled products for what they are. Who will protect our children from an industry that does not have their best interests in mind? Sincerely after the sure of the



Dear Marcia,

I'm writing to you about the classification and marketing of flavored malt beverages and alcohol energy drinks.

I am a parent and grandparent, living in Brattleboro, VT. I'm also on the board of Families of Addiction Consulting for Effective Services (FACES).

I would like to see any alcoholcontaining beverages clearly labeled with how much alcohol content is
contained within its bottle/can/package.
This would allow consumers to be
clear about what they're purchasing
AND help with proper/tegal distribution and compliance of retailers.

Thank you for your time + effort. Sincerely, Ami Maplin amimagine yahoo.



TO: UT Department of Cigur Confel RE: Public Hearings on Alcohol Energy Dunks As a professional acroing with teens and as an autil, I wrose there to be Aldred Energy drinks.